LIBRARY
SUPREME COURT, U.S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 416)

Supreme Court of the United States

OCTOBER TERM, 1954

No. 49

WILLIAM J. OPPER, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 24, 1954

CERTIORARI GRANTED JUNE 7, 1954

INDEX.

	Page
Caption in the District Court of the United States	1
Indictment	1
Plea of not guilty	10
Motion to dismiss indictment	11
Order overruling motion to dismiss indictment	13
Motion for severance	14
Order overruling motion for severance	15
Motion for dismissal of indictment and motion in the alternative for a judgment of acquittal at the close of the Government's evidence	16
Order overruling motion for dismissal of indictment and motion in the alternative for a judgment of acquittal at the close of the Government's evidence	17
Motion for dismissal of each count of the indictment and motion in the alternative for a judgment of acquittal upon each count of the indictment at the close of all the evidence	18
Order overruling motion for dismissal of each count of the indictment and motion in the alternative for a judgment of acquittal upon each count of the indictment at the close of all the evidence	19
Verdict of the jury	20
Motion for new trial, with attached affidavit of juror Raymon J. Marker	21
Supplemental affidavit of juror Raymon J. Marker	25
Order overruling motion for new trial	27
Order striking affidavit and supplemental affidavit of juror Raymon J. Marker from record	28
Judgment and commitment	29
Motion to arrest judgment	30

Order overruling motion to arrest judgment 31

Notice of appeal 32

Motion to extend time for filing record on appeal 35

Order extending time for filing record on appeal 36

Statement of points on which appellant intends to rely on appeal 37

Motion to send original exhibits to Court of Appeals in lieu of copies 38

Order to send original exhibits to Court of Appeals in lieu of copies 40

Stipulation as to contents of record on appeal 41

TRANSCRIPT OF TRIAL PROCEEDINGS.

Caption in District Court of the United States 44

Appearances 44

Colloquy between Court and prospective juror Smith .. 45

Colloquy between Court and prospective juror Biddel . 46

Plaintiff's Evidence.

Jerome Kistner—
Direct examination 55
Cross-examination 66
Redirect examination 68
Recalled 122

John DeNeale—
Direct examination 71, 78
Cross-examination 83

Ruth E. McCally—
Direct examination 84

Major Robert Melvin Paulson—
Direct examination 94, 106
Recalled—
Direct examination 123
Cross-examination 125

John W. White—
Direct examination 113

Chester Buchsbaum—
Direct examination 128, 137
Cross-examination 142
Redirect examination 165

Marijane Morrissey—
Direct examination 171
Cross-examination 181
Redirect examination 190
Recross-examination 191

Robert L. Hoover—
Direct examination 193
Cross-examination 197, 205
Redirect examination 206

Mr. Moncure Noble—
Direct examination 207, 255, 264
Cross-examination 269
Redirect examination 276

Clay W. Pardo—
Direct examination 282, 289
Cross-examination 292

Edward C. Scharrer—
Direct examination 295

Francis A. Regan—
Direct examination 317, 329
Cross-examination 337

John J. Donaldson—
Direct examination 348
Cross-examination 350

Howard Holton—
Direct examination 351
Cross-examination 363
Redirect examination 372

Lieutenant Frederick Moss—
Direct examination 373
Cross-examination 382
Redirect examination 409
Recross-examination 410
Re-redirect examination 412
Re-recross-examination 412
Re-re-redirect examination 413
Re-re-recross-examination 413

Hubert Marshall—
Direct examination 414
Cross-examination 417

Peter S. Lasho—
Direct examination 420
Cross-examination 423

Joseph Theodore Benben—
Direct examination 425
Cross-examination 427

Eugene W. Marshall—
Direct examination 430
Cross-examination 431

John B. DeNeale—
Direct examination 432
Cross-examination 444, 458
Redirect examination 490
Recross-examination 491

Defendants' Evidence.

Lieutenant Frederick Moss—
Direct examination 557
Cross-examination 571
Redirect examination 574

Norman K. Hanselman—
Direct examination 575
Cross-examination 590
Recalled—
Direct examination 618

Miss Barbara Sensenbaugh—
Direct examination 5
Cross-examination 5
Redirect examination 5
Recross-examination 5
Re-redirect examination 5

Edwin L. Wayman, Jr.—
Direct examination 5

Adam Denison Cappel—
Direct examination 6
Cross-examination 6

John A. DeWolf—
Direct examination 6

Donald H. Kline—
Direct examination 6

Robert L. Hoover—
Direct examination 6

Jerome Kistner—
Direct examination 6

Lieutenant Lawrence E. Kaperst—
Direct examination 6

Charlie Mobley—
Direct examination 6

Captain Jerry Mitchell—
Direct examination 6
Cross-examination 6

Alvin Walter Clemens—
Direct examination 6

Proceedings 6

Charge of Court to jury 6

Proceedings 6

Proceedings of June 5, 1952 6

Proceedings of June 16, 1952 6

Certificate of Clerk 6

Proceedings in United States Court of Appeals—Sixth Circuit

	PAGE
Entry—Cause Argued and Submitted	765
Judgment	765
Opinion	766
Clerk's Certificate	773
Order granting certiorari	775

42—Photostatic copy of check 333
43—Photostatic copy of a bank statement 336
44—Routing and record sheet 357
45—Work order 375
46—Record of long distance telephone call 415
47—Record of long distance telephone call 416
48—Record service for Robert Hollifield 416
49—Ticket for trip from Dayton to Chicago 421
50—Ticket for trip from Chicago to Dayton 421
51—Official leave record of Robert G. Hollifield 430
52—Order No. 3229, Supplement No. 3, dated May 1, 1952 652

Defendants' Exhibits.

A—Bid submitted by Mr. Buchsbaum in connection with E-1 kit 145
A-1—Sixth sheet of Defendants' Exhibit A 147
A-2—Third sheet of Defendants' Exhibit A 147
B—Purchase inquiry dated October 7 153
C—Letter to W. J. Opper 202
D and D-1—Document consisting of two pages 204
E—Detainer log 272
F—Test report 395
G—R and R from Frederick Moss to Mr. Hollifield 407
H—Subpoena duces tecum 418
J—Subpoena duces tecum 423
K—Notes and interview log 445
L—Notes and interview log 445

M—Notes and interview log 445
N—Notes and interview log 445
O—Notes and interview log 445
P—Notes and interview log 445
Q—Notes of Oct. 9, 1951 448
R—Notes of Oct. 6, 1951 448
S—Notes of Oct. 17, 1951 449
T—Notes of Oct. 17, 1951 449
U—Work order from the Vision Unit to Materials Laboratory 561
V—Materials Laboratory Test Report 566
W—Pair of goggles 568
X—Photograph of the E-1 survival kit 618
Y—Photograph of the D-1 survival kit 618
Z—Shipping document 627
AA—Contract No. AF 33(600) 9627 630
BB—Purchase request No. 177,205 630
CC—Invoice from W. J. Opper to Cappel-MacDonald and Company 646
DD—Invoice from W. J. Opper to Cappel-MacDonald and Company 646
EE—Voucher check 646
FF—Telegram to the Attorney General 648
GG—Telegram to Attorney Frank Svoboda 648
HH—Letter dated May 13, 1952 653

Court's Exhibit.

X—Same as Defendants' Exhibits D and D-1 207

DISTRICT COURT OF THE UNITED STATES,

Southern District of Ohio, Western Division.

No. 2669.

(18 U. S. C., Sections 281, 2 and 371.)

UNITED STATES OF AMERICA,
Plaintiff,

v.

ROBERT GEORGE HOLLIFIELD, SR.,
WILLIAM J. OPPER,
Defendants.

INDICTMENT.

(Filed March 5, 1952.)

The Grand Jury charges:

Count One.

That on or about the 1st day of October, 1950, at Wright-Patterson Air Force Base, in the Southern District of Ohio, Western Division, and within the jurisdiction of this Court, the defendant, Robert George Hollifield, Sr., then an employee of the United States, to wit, a designer and Chief of the Land Survival Unit, Medical Specialties Branch, Aero Medical Laboratory, Wright Air Development Center, United States Air Force, Wright-Patterson Air Force Base, did directly agree to receive compensation from defendant, William J. Opper, for services to be rendered by Hollifield in relation to certain purchase requests in which the United States was a party and was directly interested, which purchase requests were then before the Department of the Air Force of the United States, in that at said time and place Hollifield did directly agree to receive from Opper seventeen hundred and fifty dollars

($1,750.00) as compensation for the rendition of services by Hollifield for Opper which would consist in Hollifield's recommending the approval and procurement by the Department of the Air Force of the United States of certain types of sun goggles and ski goggles, which goggles were in relation to the following purchase requests:

Purchase Request 119443 dated August 17, 1950, which resulted in Contracts AF33(038) 17438, dated November 16, 1950, and AF33(038) 18136, dated December 18, 1950; and Purchase Requests 119432, dated July 31, 1950, and 119450, dated September 14, 1950, which resulted in Contract AF33(038) 16916, dated October 30, 1950.

The United States was then directly interested in, and was a party to, each of said purchase requests and said purchase requests were then pending before the Department of the Air Force of the United States.

At Wright-Patterson Air Force Base, Ohio, and within the jurisdiction of this Court on or about the 1st day of October, 1950, the defendant, William J. Opper, did aid, abet, counsel, induce and procure the defendant, Robert George Hollifield, Sr., unlawfully to agree to receive said compensation for said services to be rendered.

(In violation of Title 18, USC, Sections 281 and 2.)

Count Two.

That on or about the 1st day of March, 1951, in or near the City of Dayton, in the Southern District of Ohio, Western Division, and within the jurisdiction of this Court, the defendant, Robert George Hollifield, Sr., then an employee of the United States, to wit, a designer and Chief of the Land Survival Unit, Medical Specialties Branch, Aero Medical Laboratory, Wright Air Development Center, United States Air Force, Wright-Patterson Air Force Base, did receive compensation directly from defendant, William J. Opper, for services rendered and to be rendered by Hollifield in relation to certain contracts and other mat

ters in which the United States was a party and was directly interested, which contracts and other matters were then before the Department of the Air Force of the United States, in that at said time and place Hollifield did receive directly from Opper fifty dollars ($50.00) in United States currency as compensation for the rendition of services by Hollifield for Opper which consisted in Hollifield's recommending the approval and procurement by the Department of the Air Force of the United States of certain types of sun goggles and ski goggles, which goggles were in relation to the following Contracts and Purchase Requests:

Contract AF33(038) 17438, dated November 16, 1950; Contract AF33(038) 18136, dated December 18, 1950; Contract AF33(038) 16916, dated October 30, 1950; Purchase Request 133766-C, dated January 6, 1951, which resulted in Contract AF33(038) 26641, dated May 31, 1951; and Purchase Requests 133709, dated December 30, 1950, and 127196, dated January 2, 1951, which resulted in Contract AF33(038) 26634, dated June 4, 1951.

The United States was then directly interested in, and was a party to, each of said Contracts and Purchase Requests and said Contracts and Purchase Requests were then pending before the Department of the Air Force of the United States.

In or near the City of Dayton, Ohio, and within the jurisdiction of this Court on or about the 1st day of March, 1951, the defendant, William J. Opper, did aid, abet, counsel, induce and procure the defendant Robert George Hollifield, Sr., unlawfully to receive said compensation for said services so rendered and to be rendered.

(In violation of Title 18, USC, Sections 281 and 2.)

Count Three.

That on or about the 1st day of March, 1951, in or near the City of Dayton, in the Southern District of Ohio, Western Division, and within the jurisdiction of this Court, the

defendant, Robert George Hollifield, Sr., then an employee of the United States, to wit, a designer and Chief of the Land Survival Unit, Medical Specialties Branch, Aero Medical Laboratory, Wright Air Development Center, United States Air Force, Wright-Patterson Air Force Base, did receive compensation directly from defendant, William J. Opper, for services rendered and to be rendered by Hollifield in relation to certain contracts and other matters in which the United States was a party and was directly interested, which contracts and other matters were then before the Department of the Air Force of the United States, in that at said time and place Hollifield did receive directly from Opper approximately two hundred and fifty dollars ($250.00) in United States currency as compensation for the rendition of services by Hollifield for Opper which consisted in Hollifield's recommending the approval and procurement by the Department of the Air Force of the United States of certain types of sun goggles and ski goggles, which goggles were in relation to the following Contracts and Purchase Requests:

Contract AF33(038) 17438, dated November 16, 1950; Contract AF33(038) 18136, dated December 18, 1950; Contract AF33(038) 16916, dated October 30, 1950; Purchase Request 133766-C, dated January 6, 1951, which resulted in Contract AF33(038) 26641, dated May 31, 1951; and Purchase Requests 133709, dated December 30, 1950, and 127196, dated January 2, 1951, which resulted in Contract AF33(038) 26634, dated June 4, 1951.

The United States was then directly interested in, and was a party to, each of said Contracts and Purchase Requests and said Contracts and Purchase Requests were then pending before the Department of the Air Force of the United States.

In or near the City of Dayton, Ohio, and within the jurisdiction of this Court on or about the 1st day of March, 1951, the defendant, William J. Opper, did aid, abet, counsel, induce and procure the defendant, Robert George

Hollifield, Sr., unlawfully to receive said compensation for said services so rendered and to be rendered.

(In violation of Title 18, USC, Sections 281 and 2.)

Count Four.

That a short time prior to the 5th day of August, 1951, in the City of Dayton, in the Southern District of Ohio, Western Division, and within the jurisdiction of this Court, the defendant, Robert George Hollifield, Sr., then an employee of the United States, to wit, a designer and Chief of the Land Survival Unit, Medical Specialties Branch, Aero Medical Laboratory, Wright Air Development Center, United States Air Force, Wright-Patterson Air Force Base, did receive compensation directly from defendant, William J. Opper, for services rendered and to be rendered by Hollifield in relation to certain contracts in which the United States was a party and was directly interested, which contracts were then before the Department of the Air Force of the United States, in that at said time and place Hollifield did receive directly from Opper approximately two hundred dollars ($200.00) in United States currency as compensation for the rendition of services by Hollifield for Opper which consisted in Hollifield's recommending the approval and procurement by the Department of the Air Force of the United States of certain types of sun goggles and ski goggles, which goggles were in relation to the following Contracts:

Contracts AF33(038) 17438, dated November 16, 1950, AF33(038) 18136, dated December 18, 1950, AF33(038) 26641, dated May 31, 1951, AF33(038) 16916, dated October 30, 1950, AF33(038) 26634, dated June 4, 1951, and AF33(038) 29989, dated June 26, 1951.

The United States was then directly interested in, and was a party to, each of said Contracts and said Contracts were then pending before the Departn ent of the Air Force of the United States.

In the City of Dayton, Ohio, and within the jurisdiction of the Court a short time prior to the 5th day of August, 1951, the defendant, William J. Opper, did aid, abet, counsel, induce and procure the defendant, Robert George Hollifield, Sr., unlawfully to receive said compensation for said services so rendered and to be rendered.

(In violation of Title 18, USC, Sections 281 and 2.)

Count Five.

That from on or about the 1st day of October, 1950, until on or about the 26th day of September, 1951, in the Southern District of Ohio, Western Division, and within the jurisdiction of this Court, and at Chicago, Illinois, the defendants, Robert George Hollifield, Sr., and William J. Opper, did conspire to commit offenses against the United States, and to defraud the United States by conspiring to violate Section 281 or Title 18, United States Code, and to defraud the United States within the meaning of Section 371 of Title 18, United States Code, in that:

(1) The defendants did conspire to cause Hollifield, then an employee of the United States, to wit, a designer and Chief of the Land Survival Unit, Medical Specialties Branch, Aero Medical Laboratory, Wright Air Development Center, United States Air Force, Wright-Patterson Air Force Base, to directly receive from Opper compensation for services rendered and to be rendered by Hollifield in relation to the contracts and purchase requests mentioned in the first four counts of this indictment, to each of which contracts and purchase requests the United States was, during the time above mentioned, a party and was directly interested, and which contracts and purchase requests were then pending before the Department of the Air Force of the United States. The defendants did further conspire that the services which Hollifield would render for the compensation paid him and to be paid him by Opper would consist in Hollifield's recommending the approval and procurement by the Department of the Air

Force of the United States of certain types of sun goggles and ski goggles which goggles were in relation to the contracts and purchase requests above mentioned.

(2) The defendants did further conspire to defraud the United States (a) of and concerning its right to have the lawful functions of the defendant, Hollifield, as an employee of the United States Air Force, performed free from unlawful impairment, obstruction, collusion, partiality, improper influence, bias, dishonesty and fraud, and (b) of and concerning its right to have Hollifield's duties performed untainted by the unlawful receipt by him of compensation from outside sources for services rendered in connection therewith.

The Grand Jury further charges that in the furtherance of this conspiracy the defendants committed the following overt acts:

Overt Act One.

On or about the 1st day of October, 1950, at Wright-Patterson Air Force Base, Ohio, a conversation was had between Hollifield and Opper concerning the sale of goggles to concern holding contracts with the United States Air Force.

Overt Act Two.

On or about the 1st day of October, 1950, at Wright-Patterson Air Force Base, Ohio, a conversation was had between Hollifield and Opper concerning the approval for use by the United States Air Force of certain surplus goggles which might be supplied by Opper to contractors with the Air Force.

Overt Act Three.

On or about the 1st day of October, 1950, at Wright-Patterson Air Force Base, Ohio, a meeting was had between Hollifield and Opper concerning the payment of money by Opper to Hollifield for Hollifield's influence in

having certain goggles approved for use by the United States Air Force.

Overt Act Four.

On or about the 22nd day of November 1950, at Wright-Patterson Air Force Base, Ohio, Hollifield caused a memorandum to be prepared and sent to United States Air Force, Air Material Command, Procurement and Industrial Planning Division, Research and Material Section, Supply Branch, Fabric and Clothing Unit, in which it was stated that certain goggles, which had been supplied by Opper, were suitable for use by the United States Air Force.

Overt Act Five.

A short time prior to the 25th day of January, 1951, at Wright-Patterson Air Force Base, Ohio, a conference was held between Hollifield, Opper and certain Officers and employees of the Visual Unit Aero Medical Laboratory, Wright Air Development Center, Wright-Patterson Air Force Base, United States Air Force, concerning the approval for use by the United States Air Force of goggles supplied by Opper.

Overt Act Six.

On or about the 25th day of January, 1951, at Wright-Patterson Air Force Base, Ohio, Hollifield did cause a memorandum to be prepared and sent to the Visual Unit, Aero Medical Laboratory, Wright-Air Development Center, Wright-Patterson Air Force Base, United States Air Force, in which it was requested that the Visual Unit reconsider its rejection of certain goggles which had been supplied by Opper.

Overt Act Seven.

On or about the 1st day of March, 1951, between Wright-Patterson Air Force Base, Ohio, and the Van Cleve Hotel, Dayton, Ohio, Hollifield received from Opper fifty dollars ($50.00) in United States currency.

Overt Act Eight.

On or about the 1st day of March, 1951, between Wright-Patterson Air Force Base, Ohio, and the Van Cleve Hotel, Dayton, Ohio, Hollifield received from Opper approximately two hundred and fifty dollars ($250.00) in United States currency.

Overt Act Nine.

On or about the 13th day of April, 1951, while at Dayton, Ohio, Hollifield had a long distance telephone conversation with Opper at Chicago, Illinois.

Overt Act Ten.

On or about the 14th day of April, 1951, at or near 230 East Ohio Street, Chicago, Illinois, Hollifield received from Opper one thousand dollars ($1,000.00) in United States currency.

Overt Act Eleven.

On or about the 1st day of May, 1951, in the wash room of the Wrigley Building Restaurant, Chicago, Illinois, Hollifield received from Opper one hundred dollars ($100.00) in United States Currency.

Overt Act Twelve.

On or about the 31st day of July, 1951, while at Dayton, Ohio, Hollifield had a long distance telephone conversation with Opper at Chicago, Illinois.

Overt Act Thirteen.

A short time prior to the 5th day of August, 1951, in the City of Dayton, Ohio, Hollifield received from Opper approximately two hundred dollars ($200.00) in United States currency.

Conclusion.

And the Grand Jury aforesaid does say that said defendants throughout the period of time and in the place, manner and form aforesaid, unlawfully did conspire to commit offenses against the United States and to defraud the United States and did do acts to effect the objects of the conspiracy.

(In violation of Title 18, USC, Sections 281 and 371.)

A True Bill.

Filed 3-5-52 by Ida Boyd, Deputy.

/S/ HARRY L. SMITH,
Foreman.

/S/ RAY J. O'DONNELL,
United States Attorney.

PLEA OF NOT GUILTY.

(Entered April 1, 1952.)

This day came the District Attorney on behalf of the United States and the defendant William J. Opper being present in Court at Cincinnati, Ohio, and being represented by counsel, upon being arraigned entered a plea of Not Guilty in manner and form as charged in the Indictment herein.

Bond heretofore given continued in force and effect.

MOTION TO DISMISS INDICTMENT.

(Filed April 28, 1952.)

Now comes the defendant, William J. Opper, and states that the several counts of the indictment filed herein, wherein he is charged with offenses, are not sufficient in law to require him to plead thereto, and moves the court to dismiss the indictment and the several counts thereof for the following reasons, to-wit:

One: That the indictment and/or the several counts thereof, above referred to, do not set forth any offense against the United States.

Two: That the indictment and the several counts thereof are so indefinite, vague and uncertain as not fully to inform the defendant of the charges made against him and are not sufficient in form or substance to be pleaded as former jeopardy in bar of another prosecution for the same offenses.

Three: That the indictment and the several counts thereof lack that degree of clarity and definiteness required by law to enable this defendant to comprehend the charges made against him and to enable him to prepare his defense thereto.

Four: That the indictment and the several counts thereof do not conform to the requirements of constitutional law.

Five: The fifth count of the indictment attempts to charge several conspiracies.

Six: Count five attempts to charge a conspiracy to violate Section 281, Title 18, U. S. C. The very nature of the substance of offenses attempted to be charged in counts one, two, three and four requires concerted action and in

such case there can be no separate charge of conspiracy to violate said Section.

Seven: The indictment and the several counts thereof are silent as to any charge of corrupt or unlawful intent on the part of this defendant, and further fails to charge scienter on the part of the defendant, William J. Opper, as to the official status of the co-defendant, Robert George Hollifield, as an employee of the United States Government.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
Attorney for Defendant, William J. Opper,
605 Third National Bldg.,
Dayton, Ohio.

Dayton, Ohio, April 28th, 1952.

Received copy of this motion and notice of filing.

/s/ RAY J. O'DONNELL—J. B. R.,
United States Attorney.

ORDER OVERRULING MOTION TO DISMISS INDICTMENT.

(Filed May 7, 1952.)

This cause came on to be heard upon the motion of the defendant, William J. Opper, to dismiss the indictment; whereupon, the Court being fully informed in the matter, finds that said motion is not well taken and that the same should be and hereby is overruled as to each of the grounds set forth separately and in its entirety.

Exceptions to defendant.

/s/ NEVIN,
Judge, United States District Court.

/s/ RAY J. O'DONNELL,
United States Attorney.

/s/ FRANCIS C. CANNY,
Attorney for Defendant.

MOTION FOR SEVERANCE.

(Filed April 14, 1952.)

Comes now the defendant, William J. Opper, by his undersigned attorneys, and moves the Court to grant a severance to him in the above entitled cause.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
3rd National Bank Building,
Dayton, Ohio,
CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
By /s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,
Lincoln Bank Tower,
Fort Wayne, Indiana,
Attorneys for the Defendant,
William J. Opper.

April 14, 1952.

Received copy of this motion and memo and notice of its filing.

/s/ RAY J. O'DONNELL,
United States Attorney.

ORDER OVERRULING MOTION FOR SEVERANCE.

(Filed April 29, 1952.)

This cause came on to be heard upon the motion of the defendant William J. Opper for a severance of defendants pursuant to Rule 26, Federal Rules of Criminal Procedure, and was presented to the Court April 24, 1952, upon the briefs and arguments of Counsel; whereupon the Court being fully informed in the matter finds that said motion is not well taken and that the same should be and hereby is overruled.

Exceptions to defendant.

/s/ NEVIN,
Judge.

Approved:

/s/ LOREN G. WINDOM,
Assistant United States Attorney,
Attorney for Plaintiff.

/s/ FRANCIS C. CANNY,
Attorney for Defendant

MOTION FOR DISMISSAL OF INDICTMENT AND MOTION IN THE ALTERNATIVE FOR A JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S EVIDENCE.

(Filed May 26, 1952.)

Comes now the defendant, William J. Opper, at the close of the Government's evidence and moves the Court to dismiss the indictment in the above entitled cause as to the defendant, William J. Opper, or, in the alternative, moves the Court to enter a judgment of acquittal as to the defendant, William J. Opper, in the above entitled cause.

s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
3rd National Bank Building,
Dayton, Ohio,

CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Bank Tower,
Fort Wayne, Indiana,

By s/ ALEXANDER M. CAMPBELL,
ALEXANDER M. CAMPBELL,
s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,

Attorneys for the Defendant,
William J. Opper.

ORDER OVERRULING MOTION FOR DISMISSAL OF INDICTMENT AND MOTION IN THE ALTERNATIVE FOR A JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S EVIDENCE.

(Filed June 2, 1952.)

This day this cause came on to be heard on the "Motion for Dismissal of Indictment as to Defendant William J. Opper and Motion in the Alternative for a Judgment of Acquittal as to the Defendant William J. Opper," heretofore, to-wit, on May 26, 1952, filed by the defendant, William J. Opper.

Upon consideration whereof, the briefs and arguments of counsel for the respective parties, the Court is of the opinion and so finds that the "Motion for Dismissal of Indictment as to defendant, William J. Opper," is not well taken, and that it should be and it is overruled, and that the "Motion in the Alternative for a Judgment of Acquittal as to the defendant, William J. Opper," is not well taken, and that it should be and it is overruled.

The Court is of the opinion and finds, therefore, that the Motions hereinabove referred to, filed by the defendant, William J. Opper, "For Dismissal of Indictment" and "Motion in the Alternative for a Judgment of Acquittal as to the defendant, William J. Opper," are not well taken and should be overruled as to every branch thereof and in its entirety.

To all of which findings, rulings, orders and decrees of the Court defendant, William J. Opper, excepts.

/s/ NEVIN,
Chief Judge for the Southern District of Ohio.

/s/ J. VINCENT AUG,
/s/ FRANK J. RICHTER,
Attorneys for Plaintiff.

/s/ FRANCIS C. CANNY,
/s/ ALEX CAMPBELL,
Attorneys for Defendant, William J. Opper.

MOTION FOR DISMISSAL OF EACH COUNT OF THE INDICTMENT AND MOTION IN THE ALTERNATIVE FOR A JUDGMENT OF ACQUITTAL UPON EACH COUNT OF THE INDICTMENT AT THE CLOSE OF ALL THE EVIDENCE.

(Filed June 2, 1952.)

Comes now the defendant, William J. Opper, at the close of all the evidence and moves the court to dismiss each count of the Indictment as to the defendant, William J. Opper, or, in the alternative, moves the court to enter a judgment of acquittal as to the defendant, William J. Opper, as respects each count of the Indictment in the above-entitled cause.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
3rd National Bank Building,
Dayton, Ohio,

CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Bank Tower,
Fort Wayne, Indiana,

By /s/ ALEXANDER M. CAMPBELL,
ALEXANDER M. CAMPBELL,
/s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,

Attorneys for the Defendant,
William J. Opper.

ORDER OVERRULING MOTION FOR DISMISSAL OF EACH COUNT OF THE INDICTMENT AND MOTION IN THE ALTERNATIVE FOR A JUDGMENT OF ACQUITTAL UPON EACH COUNT OF THE INDICTMENT AT THE CLOSE OF ALL THE EVIDENCE.

(Filed June 3, 1952.)

This cause coming on to be heard on the "Motion for Dismissal of Each Count of the Indictment as to Defendant, William J. Opper, and Motion in the Alternative for a Judgment of Acquittal Upon Each Count of the Indictment as to the Defendant, William J. Opper";

The Court, being fully advised in the premises, hereby finds that the Motion is not well taken, and it is hereby overruled.

To all of which defendant, William J. Opper, by his counsel, excepts.

/s/ NEVIN,
Chief Judge for the Southern District of Ohio.

/s/ J. VINCENT AUG,
/s/ FRANK J. RICHTER,
Attorneys for Plaintiff.

/s/ FRANCIS C. CANNY,
/s/ JOHN M. KELLEY, JR.,
/s/ ALEX CAMPBELL,
Attorneys for Defendant, William J. Opper.

VERDICT OF JURY.

(Filed June 5, 1952.)

We, The Jury, herein do find the defendant, William P. Opper, guilty in manner and form as charged in the 1, 2, 3, 4, and 5 counts of said indictment, and ..... guilty as charged in the remaining counts thereof.

Signed Thomas F. Anderson, Foreman.
2. William F. MacCandless,
3. Mary K. Tobin,
4. Lillian E. Lewe,
5. Otto D. Sanda,
6. Raymon Marker,
7. Rita Hussmann,
8. Carl W. Epley,
9. Marguerite Stoltz,
10. Robert J. McCarthy,
11. Helen See,
12. John E. Parker.

MOTION FOR NEW TRIAL, WITH ATTACHED AFFIDAVIT OF JUROR RAYMON J. MARKER.

(Filed June 10, 1952.)

Comes now the defendant, William J. Opper, and moves the court to set aside the verdict herein and to grant him a new trial in this cause for the reasons hereinafter set forth, to-wit:

First: That the court erred in overruling this defendant's motion for severance made before trial and renewed during the course of the presentation of the Government's evidence.

Second: That the court erred in overruling this defendant's motion for a continuance made before trial.

Third: That the court erred in overruling the motion of this defendant to dismiss the indictment herein, made before trial and renewed both at the conclusion of the Government's evidence and at the conclusion of all the evidence, for the reasons and upon the grounds stated in said motion and in the memoranda attached thereto.

Fourth: That the court erred in admitting incompetent, irrelevant, immaterial and prejudicial evidence against this defendant.

Fifth: That the court erred in unjustly limiting the cross-examination, by defendant's counsel, of the Government's witnesses Jerome Kistner, Major Robert Paulson, John W. White, Chester Buchsbaum, Mary Jane Morrisey, Robert L. Hoover, Moncure Noble, Clay W. Pardo, Francis Regan and John DeNeale.

Sixth: That the court erred in overruling the motion of this defendant to delete the name of Opper from (a) those

portions of Government Exhibits 37, 38, 39 and 40 as were received in evidence, and from (b) the testimony of Government witnesses Moncure Noble, Clay W. Pardo, Edward C. Scharrer and John DeNeale.

Seventh: That the court erred in admitting into evidence against this defendant Government Exhibits numbered 2 to 13 all inclusive; Government Exhibit No. 15; Government Exhibits numbered 17 to 51 all inclusive.

Eighth: That the court erred in overruling the motion of this defendant in the alternative for judgment of acquittal made at the close of the Government's evidence and renewed at the close of all of the evidence.

Ninth: That the court erred in overruling the motion of this defendant made at the close of the Government's evidence and renewed at the close of all the evidence to strike from the record in this cause all the evidence, written and oral, constituting statements and/or admissions made by either of the defendants on and subsequent to September 26, 1951.

Tenth: That the court erred in overruling the motion of this defendant for a continuance made during the course of the presentation of defendant's evidence.

Eleventh: That the court erred in unjustly excluding competent, relevant and material evidence offered and tendered in evidence by the defendant both in the form of testimony and in the form of written exhibits.

Twelfth: That there was not sufficient evidence to sustain the verdict or upon which the verdict of the jury may be sustained or to establish the guilt of this defendant as to any of the counts of the indictment.

Thirteenth: That the court erred in overruling this defendant's motion made at the conclusion of all the evi-

dence to strike Government's Exhibits 31 and 44 and all testimony relating thereto.

Fourteenth: That the court erred in overruling this defendant's motion, made at the conclusion of all the evidence, for an order requiring the Government to elect as between certain counts of the indictment.

Fifteenth: That the verdict of the jury was the result of bias and prejudice.

Sixteenth: That the verdict of the jury is contrary to the evidence.

Seventeenth: That the verdict of the jury is contrary to law.

Eighteenth: That the court erred in overruling the defendant's requests for instructions.

Nineteenth: That the court erred in refusing defendant's motion and request to order the jury to return to the Jury room for further deliberations. At the time said motion was made by defense counsel the jury was in the Jury Box and was being polled by the court. During the polling of the jury it developed that Juror No. 6, Mr. Raymon J. Marker, failed to indicate in response to a question from the Court that he had arrived at a verdict. Said Juror in response to the question by the court when polled said in substance "I guess." Whereupon, the defense counsel made the motion to return the jury for further deliberations on the grounds that all twelve of the Jurors had not arrived at a verdict. Said Juror has made an affidavit, which is filed herewith and marked:

EXHIBIT "A."

Twentieth: That the jury did not reach an unanimous verdict.

See Defendant's Exhibit "A."

Wherefore, this defendant prays the order of the court.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
605 Third National Bank Bldg.,
Dayton, Ohio,
CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Tower,
Fort Wayne, Indiana,
By /s/ ALEX CAMPBELL,
ALEX CAMPBELL,
By /s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,
Attorneys for the Defendant William J. Opper.

AFFIDAVIT.

(Exhibit "A.")

State of Ohio,
Montgomery County, ss:

Raymon J. Marker, being first duly cautioned and sworn says as follows: I was a sworn juror in the above entitled cause. In the last few minutes before the jury left the Jury Room to report its verdict, I changed my vote from "Not Guilty" to "Guilty"; one other juror was also voting for acquittal up to the last half hour. It had been intimated by two of the jurors that I had some ulterior reason for my voting. Also, the Court, on the first day of the trial censored a prospective juror in severe terms for not saying earlier that he could not serve for personal reasons. I signed the verdict of "Guilty," but when I was seated in the jury box and was asked individually if it was my verdict I wanted to speak out that it was

not my conscientious verdict, but I was afraid the Court would censor me or hold me in contempt of court for changing my verdict after having signed it. My conscience bothered me afterward and I sought out Harold H. Shellenberger and told him of my situation. I give this affidavit in the interest of justice and to clear my conscience.

/s/ RAYMON J. MARKER.

Sworn to and subscribed before me by the said Raymon J. Marker, this 6th day of June, 1952.

/s/ HELEN L. KOPENS,
Notary Public, Montgomery County, Ohio.

Helen L. Kopens,
My commission expires February 14, 1954.

SUPPLEMENTAL AFFIDAVIT OF JUROR RAYMON J. MARKER.

(Filed June 16, 1952.)

State of Ohio, County of Darke: SS

Raymon J. Marker, being first duly cautioned and sworn, says that this is a supplemental affidavit to his previous affidavit dated June 6, 1952.

Supplemental Affidavit of Juror Raymon J. Marker

Affiant says that one of the jurors in the above entitled case, at a late stage in the deliberations, demanded to know of him "What's in this for you?" or words to that effect; and that upon violent protest of affiant against this remark another juror said "If the shoe fits wear it", or words to that effect.

Affiant says that he felt that he was under strong suspicion of corrupt motives in voting for acquittal; that several of his fellow jurors were extremely critical of his position.

Affiant says that the verdicts he signed were not his true verdicts and that he signed said verdicts under pressure.

Further affiant saith not.

/s/ RAYMON J. MARKER.

Sworn to before me and subscribed in my presence, by the said Raymon J. Marker, this 14th day of June, A. D. 1952.

/s/ HAROLD L. SHELLENBERGER.

Harold L. Shellenberger, Notary Public in and for State of Ohio at Large.

My Commission Expires: 4-21-1955.

(Seal)

ORDER OVERRULING MOTION FOR NEW TRIAL.

(Filed June 20, 1952.)

On June 16, 1952, this cause came on to be heard on the motion for new trial theretofore, to-wit, on June 10, 1952, filed by defendant herein, William J. Opper.

Upon consideration whereof, the Court, having heard the arguments of counsel and being fully advised in the premises, found, and does find, that the motion for new trial hereinabove referred to, filed on June 10, 1952, is not well taken as to each and every reason and paragraph set forth therein.

It was, and is, therefore, by the Court ordered on June 16, 1952, that the motion for new trial above referred to, filed by defendant William J. Opper, be, and hereby it is, overruled as to each and every reason and paragraph thereof and in its entirety.

To all of which findings, rulings and decrees of the Court, defendant Opper excepts.

/s/ ROBERT R. NEVIN,
Chief Judge, U. S. District
Court, S. D. O.

ORDER STRIKING AFFIDAVIT AND SUPPLEMENTAL AFFIDAVIT OF JUROR RAYMON J. MARKER FROM RECORD.

(Filed June 20, 1952.)

On June 10, 1952, defendant herein, Opper, filed a motion for a new trial, to which he attached, as Exhibit A, an affidavit purporting to have been signed by one Ramon J. Marker, a juror who sat in the trial of the case.

Upon a consideration of the motion for a new trial and the affidavit attached thereto, the Court, on June 16, 1952, found that the affidavit was not only wholly irrelevant and immaterial, but highly impertinent, and the Court, of its own motion, therefore, on June 16, 1952, ordered the affidavit stricken from the record.

And it further appearing that on June 16, 1952, a document entitled "Supplemental Affidavit" also purporting to have been signed by one Ramon J. Marker, was filed by defendant Opper, the Court on June 16, 1952, for the reasons above stated with regard to the affidavit marked Exhibit A, attached to the motion for a new trial by defendant Opper, of its own motion, ordered the so-called "Supplemental Affidavit" stricken from the record.

To all of which findings, rulings, orders and decrees of the court defendant Opper excepts.

/s/ ROBERT R. NEVIN,
Chief Judge, U. S. District
Court, S. D. O.

JUDGMENT AND COMMITMENT.

(Filed June 16, 1952.)

On this 16th day of June, 1952, came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not Guilty and a Verdict of guilty of the offense of Employee of U. S. receiving compensation in matter affecting Government, and aiding, inducing, etc., commission of said act in violation of Sec. 281, T. 18, USC, and Sec. 2, T. 18, USC; Conspiracy to violate Sec. 281, T. 18, USC, and to defraud the United States in violation of Sec. 371, T. 18, USC, as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two years on count 1; and One year on count 4. The sentence on count 4 to run consecutively with the sentence on count 1. Pay a fine of $500.00 on count 2 and stand committed until the fine is paid or otherwise discharged by law. Pay a fine of $500.00 on count 3 and stand committed until the fine is paid or otherwise discharged by law. Remanded to the custody of the Attorney General for a period of one year and one day on count 5. The sentence on count 5 to run concurrently with the sentences on counts 1 and 4.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

shal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ ROBERT R. NEVIN,
United States District Judge.

Approved:

/s/ RAY J. O'DONNELL,
U. S. Attorney.

MOTION TO ARREST JUDGMENT.

(Filed June 10, 1952.)

Now comes the defendant, William J. Opper, by his attorneys, and moves the court to arrest judgment because none of the counts in the Indictment charges an offense against the United States.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
605 Third National Bank Bldg.,
Dayton, Ohio,

CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Tower,
Fort Wayne, Indiana,

By /s/ ALEX CAMPBELL,
ALEX CAMPBELL,
By /s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,
Attorneys for Defendant
William J. Opper.

June 10, 1952.

Received copy of the above motion and Notice of Rehearing thereon.

/s/ RAY J. O'DONNELL,
United States Attorney, S. D. O.

ORDER OVERRULING MOTION TO ARREST JUDGMENT.

(Filed June 20, 1952.)

On June 16, 1952, this cause came on for hearing on the "motion to arrest judgment" theretofore, to-wit, on June 10, 1952, filed by defendant William J. Opper.

Upon consideration whereof, the Court was, and is, of the opinion that the motion to arrest judgment just referred to was not, and is not, well taken and that it should be overruled.

It Is, Therefore, by the Court Ordered, Adjudged and Decreed that the motion to arrest judgment filed by defendant Opper on June 10, 1952, be, and hereby it is, as of June 16, 1952, overruled.

To all of which findings, rulings and decrees of the Court defendant Opper excepts.

/s/ ROBERT R. NEVIN
Chief Judge,
U. S. District Court, S. D. O.

NOTICE OF APPEAL.

(Filed June 17, 1952.)

Item I: The Title of This Case:

United States of America

v.

Robert George Hollifield, Sr.
William J. Opper

Case No. 2669 Criminal

United States District Court
Southern District of Ohio
Western Division

Item II: Names and Addresses of Appellant and His Counsel:

Appellant: William J. Opper, 230 Ohio Avenue, Chicago, Illinois.

Counsel for Appellant: Francis C. Canny, 605 Third National Bldg., Dayton, Ohio; Campbell, Livingston, Teeple & Dildine, 1525 Lincoln Tower, Fort Wayne, Indiana, By: Alexander Campbell, By: John M. Kelley, Jr.

Item III: General Statement of the Offense:

Appellant was found guilty on all five (5) counts of the indictment.

The first count of the indictment charged appellant under Section 2, Title 18, USC, with aiding and abetting Hollifield in violating Section 281, Title 18 of the United States Code, by his (Hollifield's) agreeing to receive compensation for services to be rendered for appellant in connection with purchase requests and contracts to which the United States was a party, he, Hollifield, being an employee of the United States.

The second count charged appellant under Section 2, Title 18, of the United States Code, with aiding and abet-

ting Hollifield, a government employee, to violate Section 281, of the United States Code, in that he (Hollifield) received the sum of Fifty ($50.00) Dollars from appellant for services in connection with contracts to which the United States was a party.

The third count charged appellant under Section 2, Title 18, of the United States Code, with aiding and abetting Hollifield, a government employee, to violate Section 281, of the United States Code, in that he (Hollifield) received the sum of Two Hundred Fifty ($250.00) Dollars from appellant for services in connection with contracts to which the United States was a party.

The fourth count charged appellant under Section 2, Title 18, of the United States Code, with aiding and abetting Hollifield, a government employee, to violate Section 281, of the United States Code, in that he (Hollifield) received the sum of Two Hundred ($200.00) Dollars from appellant for services in connection with contracts to which the United States was a party.

Appellant was also found guilty in count five (5) of the indictment charging appellant with conspiracy with his co-defendant, Robert George Hollifield, Sr. (United States employee involved), to defraud the United States to commit offenses against the United States and to defraud the United States by conspiring to violate Section 281 of Title 18 of the United States Code, and to defraud the United States within meaning of Section 371, Title 18 of the United States Code, by means of giving and receiving compensation in connection with purchase orders and contracts in which the United States was a party and directly interested by reason of which payments the defendant, Hollifield, was induced to favor the appellant.

Item IV: Statement of Judgment and Sentence:

The court entered judgment on the verdict of guilty (which had been returned June 5, 1952) on June 16, 1952, and imposed upon appellant the following sentence:

Two years on Count One.

Fine of Five Hundred ($500.00) Dollars on Count Two.

Fine of Five Hundred ($500.00) Dollars on Count Three.

One year on Count Four to run consecutively with Count One.

One year and a day on Count Five to run concurrently with Counts One and Four.

Item V: Place of Confinement:

Appellant, William J. Opper, is presently confined in the County Jail, Miami County, Troy, Ohio.

Item VI: The appellant, William J. Opper, appeals from the judgment of the court entered June 16, 1952, to the United States Court of Appeals, Sixth Circuit.

Dated: June 17, 1952.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
605 Third National Bldg.,
Dayton, Ohio,
CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Tower,
Fort Wayne, Indiana,
By /s/ ALEXANDER CAMPBELL,
ALEXANDER CAMPBELL,
By /s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,
Attorneys for Appellant, William J. Opper.

Copy of Notice of Appeal, Appellant, William J. Opper, received 6/17/52 day of June, 1952, Dayton, Ohio.

/s/ R. J. O'DONNELL,
United States Attorney.

MOTION TO EXTEND TIME FOR FILING RECORD ON APPEAL.

(Filed July 25, 1952.)

Now come the defendants, Robert George Hollifield, Sr., and William J. Opper, and move the Court to extend the time for filing and docketing the record on appeal herein until the 25th day of September, 1952.

Notice of appeal was filed in the District Court on the 16th day of June, 1952, and counsel for defendants were advised by the official court stenographer of the District Court that it is impossible for her to have the transcription of the record complete before the 25th day of August, 1952, and thereafter the record must be printed.

Wherefore, the defendants pray that the Court will enter an order extending the time for filing and docketing the record until September 25, 1952.

/s/ FRANK J. SVOBODA, JR.,
FRANK J. SVOBODA, JR.,
1040 Third National Bldg.,
Dayton, Ohio,
Attorney for Defendant,
Robert George Hollifield, Sr.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
Attorney for Defendant,
William J. Opper
605 Third National Bldg.,
Dayton, Ohio.

Received a copy of the above motion and notice this 26th day of July, 1952.

/s/ RAY J. O'DONNELL,
United States Attorney.

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL.

(Filed July 25, 1952.)

This cause came on for hearing on the motion of Robert George Hollifield, Sr., and William J. Opper, defendants, to extend time for filing the record on appeal to the Court of Appeals for the Sixth Circuit, and good cause appearing for such extension, it is

Ordered that the time for filing the record on Appeal, and docketing the appeal herein be and the same hereby is extended to and including the 25th day of September, 1952.

/s/ ROBERT R. NEVIN,
Judge.

/s/ RAY J. O'DONNELL,
United States Attorney.

/s/ FRANK J. SVOBODA, JR.,
FRANK J. SVOBODA, JR.,
Attorney for defendant,
Robert George Hollifield, Sr.,
1040 Third National Bldg.,
Dayton, Ohio.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
Attorney for defendant,
William J. Opper,
605 Third National Bldg.,
Dayton, Ohio.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

(Filed August 18, 1952.)

Appellant, William J. Opper, by his counsel, states that the points on which he intends to rely on his appeal are as follows:

1. The District Court erred in overruling Appellant's motion to dismiss the indictment made before trial and renewed at the conclusion of the Government's evidence and at the conclusion of all the evidence.

2. The District Court erred in overruling Appellant's motion for judgment of acquittal made at the close of the Government's evidence and renewed at the close of all the evidence.

3. There was not sufficient evidence to sustain the verdict or upon which the verdict of the jury may be sustained or to establish the guilt of Appellant upon any of the counts of the indictment.

4. The verdict of the jury is contrary to the evidence.

5. The verdict of the jury is contrary to law.

6. The jury did not reach an unanimous verdict.

7. The District Court erred in denying Appellant's motion and request to order the jury to return to the jury room for further deliberations.

8. The District Court erred in denying Appellant's motion that the Court conduct an investigation for the purpose of interrogating all of the jurors concerning the occurrences set forth in the affidavit and supplemental affidavit of juror Raymond J. Marker.

9. The District Court erred in striking from the record the affidavit and supplemental affidavit of juror Raymond J. Marker.

10. The District Court erred in overruling Appellant's motion for a new trial.

11. The District Court erred in overruling Appellant's motion to arrest judgment.

/s/ FRANCIS C. CANNY,
FRANCIS C. CANNY,
605 Third National Bank,
Dayton, Ohio,
CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Tower,
Fort Wayne, Indiana,
By: /s/ JOHN M. KELLEY, JR.,
By: /s/ ALEX CAMPBELL,
Attorneys for Appellant.

Receipt of a copy and notice of filing of the foregoing statement of points on which Appellant William J. Opper intends to rely on appeal is hereby acknowledged this 12th day of August, 1952.

/s/ FRANK J. RICHTER,
Asst. United States Attorney.

MOTION TO SEND ORIGINAL EXHIBITS TO COURT OF APPEALS IN LIEU OF COPIES.

(Filed September 4, 1952.)

Now comes the defendant (Appellant) William J. Opper, by his undersigned attorneys, and moves the Court for an order providing that the original exhibits hereinafter designated, be transmitted to the Court of Appeals in lieu of

copies thereof in accordance with Rule 75 (i), Federal Rules of Civil and Criminal Procedure, the exhibits aforesaid being as follows: Government Exhibits Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28-a, 28-b, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51; and defendant (Appellant) Exhibits Nos. a, a-1, a-2, b, c, d, d-1, g, u, v, cc, and ee.

The instant motion is made for the reason that the exhibits aforesaid are bulky and voluminous in nature, consisting in large part of Government contracts, the copying of which would entail great time and expense, and that the ends of justice would be fully served for the purposes of this appeal if said exhibits were before the Court of Appeals in their original form.

CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Bank Tower,
Fort Wayne, Indiana,

By: /s/ ALEXANDER CAMPBELL,
ALEXANDER CAMPBELL,

By: /s/ JOHN M. KELLEY, JR.,
JOHN M. KELLEY, JR.,

Attorneys for the Appellant
William J. Opper.

Service of a copy of the foregoing motion and notice of filing is hereby acknowledged this 3 day of September, 1952.

/s/ J. VINCENT AUG,
Asst. United States Attorney.

ORDER TO SEND ORIGINAL EXHIBITS TO COURT OF APPEALS IN LIEU OF COPIES.

(Filed September 4, 1952.)

On motion of Appellant, William J. Opper,

It is ordered that the Clerk of this Court transmit to the Clerk of the United States Court of Appeals, for the Sixth Circuit, with and as a part of the record on appeal in said cause, and in lieu of copies thereof, the following original exhibits in said cause: Government Exhibits Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28-a, 28-b, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51; and defendant (Appellant) Exhibits Nos. a, a-1, a-2, b, c, d, d-1, g, u, v, cc and ee.

Dated September 4, 1952.

/s/ ROBERT R. NEVIN,
Chief Judge, for the Southern
District of Ohio.

Have Seen—

RAY J. O'DONNELL,
J. VINCENT AUG,
For Plaintiff,
United States of America.

JOHN M. KELLEY, JR.,
Attorney for William J. Opper,
Defendant-Appellant.

STIPULATION AS TO CONTENTS OF RECORD ON APPEAL.

(Filed September 10, 1952.)

It is hereby stipulated by and between the attorneys for the appellant, William J. Opper, and the attorneys for the appellee, United States of America, that the following shall constitute the transcript of record on appeal herein from the above-named court to the United States Court of Appeals for the Sixth Circuit, in the above-entitled cause:

1. Indictment.

2. Plea of not guilty.

3. Motion to dismiss the indictment.

4. Order overruling motion to dismiss the indictment.

5. Motion for severance.

6. Order overruling motion for severance.

7. Motion for dismissal of indictment and motion in the alternative for a judgment of acquittal filed at the close of the Government's evidence.

8. Order overruling motion for dismissal of indictment and motion in the alternative for a judgment of acquittal filed at the close of the Government's evidence.

9. Motion for dismissal of indictment and motion in the alternative for a judgment of acquittal filed at the close of all the evidence.

10. Order overruling motion for dismissal of indictment and motion in the alternative for a judgment of acquittal filed at the close of all the evidence.

11. Verdict of the jury.

12. Motion for a new trial with attached affidavit of juror Raymon J. Marker.

13. Supplemental affidavit of juror Raymon J. Marker.

14. Order overruling motion for a new trial.

15. Order striking affidavit and supplemental affidavit of juror Raymon J. Marker from the record.

16. Judgment and commitment.

17. Motion to arrest judgment.

18. Order overruling motion to arrest judgment.

19. Notice of appeal.

20. Motion to extend time for filing record on appeal.

21. Order extending time for filing record on appeal.

22. Statement of points upon which appellant intends to rely on appeal.

23. Motion to send original exhibits to United States Court of Appeals in lieu of copies.

24. Order to send original exhibits to United States Court of Appeals in lieu of copies.

25. Stipulation as to contents of record on appeal.

26. Complete transcript of trial proceedings omitting opening statements and closing arguments of counsel and including colloquy between the Court and prospective jurors Smith and Biddel of May 7, 1952, the Court's charge to the jury and the proceedings of June 5, 1952 and June 16, 1952.

27. Government Exhibits Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28-a, 28-b, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51.

28. Defendant's (appellant's) Exhibits Nos. a, a-1, a-2 b, c, d, d-1, g, u, v, cc and ee.

Dated September 8th, 1952.

CAMPBELL, LIVINGSTON, TEEPLE & DILDINE,
1525 Lincoln Tower,
Fort Wayne, Indiana,
By: /s/ ALEX CAMPBELL,
By: /s/ JOHN M. KELLEY, JR.,
Attorneys for Appellant
William J. Opper.

/s/ J. VINCENT AUG,
Assistant United States Attorney,
Southern District of Ohio,
Western Division,
For Appellee.

TRANSCRIPT OF TRIAL PROCEEDINGS.

In the
DISTRICT COURT OF THE UNITED STATES
For the Southern District of Ohio,
Western Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT GEORGE HOLLIFIELD, SR., WILLIAM J. OPPER,
Defendants.

Case No. 2669,
Criminal.

Before Honorable Robert R. Nevin, Chief Judge, and a Jury Comprised of Twelve Regular Jurors and Two Alternate Jurors, at Dayton, Ohio, Commencing May 7, 1952.

Present:

For the Government:

Hon. Frank Richter,
Hon. Vincent J. Aug,
Assistants to the U. S. Attorney.

Hon. James E. Ruffin,
Washington, D. C.

For the Defendant Hollifield:

Arthur W. Meyring, Esq.,
Frank J. Svoboda, Jr., Esq.

For the Defendant Opper:

Francis C. Canny, Esq.,
Alex. Campbell, Esq.,
John M. Kelley, Jr., Esq.

Afternoon Session.

Wednesday, May 7, 1952.

Court met pursuant to adjournment. Counsel being present as heretofore noted, the trial of this case proceeded as follows:

The Court: Are counsel ready to proceed in the case of United States vs. Hollifield and Opper, No. 2669?

Mr. Aug: The government is ready, your Honor.

The Court: And the defendants?

Mr. Canny: Defendant Opper is ready.

Mr. Meyring: Defendant Hollifield is ready, your Honor.

The Court: The clerk will call the jurors and as your names are called, Ladies and Gentlemen, come forward, if you please, and take a seat in the jury box.

Thereupon the jurors were examined on their voir dire by counsel upon both sides, during which the following took place:

• • • • • • •

Mr. Aug: Mr. Smith from Rossburg?

Mr. Smith: Right.

Mr. Aug: How long have you lived there?

Mr. Smith: Lifetime.

Mr. Aug: Wha' do you do?

Mr. Smith: Foreman and general manager of Smith Chevrolet.

Mr. Aug: You have an automobile agency?

Mr. Smith: And a repair service.

Mr. Aug: You have a financial interest?

Mr. Smith: Yes.

Mr. Aug: Know of any reason why you couldn't render a fair and impartial verdict?

Mr. Smith: May I ask a question? I didn't get an opportunity to say anything before I was selected up here. For business reasons it would make it almost impossible for me to be here.

The Court: Why didn't you say that this morning? That is what I asked. You are excused. I don't want anybody sitting around like that. I told you all this morning. You said you would serve and I told the clerks to inquire and they said they asked everybody. We don't want to take our time fooling around with people who act like that. You are excused. Take him off of the jury entirely. I get so provoked at these people. We give them every opportunity in the world. Instead of taking it, they take up our time here to try and qualify them. Take him off the jury.

• • • • • • • •

Mr. Aug: We will excuse Mr. Biddel, if the Court please.

Mr. Biddel (Prospective Juror No. 6): May I ask one question, Judge? I work on the race tracks. Never bet on a horse in my life and the government accepts our money for taxes—

The Court: You can make your speech out in the hall. Don't take up our time in here. Call the next juror.

• • • • • • • •

The Court: Now, the balance of you who have not been called or excused, you return, if you please, tomorrow morning at 11 o'clock.

Now, you Ladies and Gentlemen who are in the jury box, of course, you have not been selected as jurors yet, but you made the first step in that direction. At least, you are sitting in the jury box. Of course, you don't know anything about this case and I wish that you would not discuss it among yourselves. I am not going to tell you

not to read the newspapers, because the minute I told you not to, why then somebody will begin to wonder what is in there and that is the first thing you want to do. So, I am not going to put a prohibition like that on you, but on the other hand you must not be prejudiced by anything you have read in the newspapers or anything that you may read in the newspapers, either now or at any time during the progress of this trial. This case must be decided on the evidence that you will hear from the witnesses and the law as I shall charge it to you, as I understand it to apply to this case. Outside of that there is nothing must interfere.

So, just be a little careful from now on, because you might be chosen and I wouldn't want anything to happen between now and tomorrow that would disqualify you. I know counsel don't either, because it is quite difficult to get a jury together.

I always adjourn at 4 o'clock and it is practically that time now. Adjourn court until tomorrow morning at 11 o'clock.

Morning Session.

Thursday, May 8, 1952.

Court met pursuant to adjournment. Counsel being present as heretofore noted, the trial of this case proceeded as follows:

The Court: Are we about to call a juror?

Mr. Canny: Yes, your Honor.

The Court: Call the next juror, please.

Thereupon counsel upon both sides proceeded to examine the jurors on their voir dire.

The Court: Now, Ladies and Gentlemen, who are in the jury box including the two alternates here, I want to speak to you just a moment or two before you are sworn. You have been asked all the questions by counsel on both

sides and they are satisfied to have the jury as it stands now and, of course, I am satisfied. However, I want to tell you one or two things, so you will understand about them before we start in. They have nothing to do with your qualifications as such under the law. I don't know how long this case will take. Even counsel could only give us an estimate, I presume. It may take several days and it may not, but we must assume, perhaps it will.

Now, if any of you are not in good health, or if any of you have any sickness at home, or if you Gentlemen have any business at your office or wherever it is you may be employed that you think would prevent you from giving to this case your undivided attention, I wish you would let us know that now. Of course, that is what I tried to say to that Gentleman yesterday. I perhaps should not have been quite so quick about it, but I thought he should have told us in advance without waiting until counsel asked him all the questions and then tell us he couldn't sit on account of his business. But even so, now that you are chosen, I don't want to impose on anybody and neither do counsel. They want you and the Court wants you to give your undivided attention to this case, while the court is here in session in your hearing.

Now, if there are any of you ladies that have children that you think may require you to be home at a certain time, as important as this case is, none of it is quite as important as the children. I don't want you to be worried here, look at the clock and think, "I should have been home thirty minutes ago to take care of the children." That is not what we want you to do. We want your mind to be clear, free and unencumbered while you are here.

Our hours will be from 11 o'clock every morning except days that I may tell you, but now the court day will be, from Monday until Friday, from 11 to 1 in the morning and then we will recess for the noon adjournment and then we will run from 2 until 4. Those hours I am respon-

sible for, because I haven't been too well the last few years and I have had to take it a little bit slower. So we will put in the four hours without recess, unless an emergency calls for it, every day except such days or times as I might designate.

Now, before you are sworn, please think these matters over very carefully, because just the minute that you are sworn the whole thing in the eyes of the law has been changed, a whole new status arises in the eyes of the law the minute you are sworn as jurors. I can't go into that. Counsel know what I am talking about. It is not material, but that is the fact: Once you are sworn we get into another phase of the case, another phase of the law. So, I want to give you, in all fairness to you and to each of you an opportunity now to be excused, if you would like, before you are sworn. * * * Now, having heard all of that and understanding that you all otherwise qualify, stand up and say so.

Thereupon some of the prospective jurors asked to be excused and counsel upon both sides proceeded to examine other prospective jurors until the panel was filled, after which the jury was sworn.

The Court: Now, Members of the Jury, you have all been chosen to sit as jurors in this case. You will find that you have a very important function to perform as we go along.

I will tell you this now but you must remember this throughout the entire case. I will probably make reference to it each time we adjourn or recess, but if I do not, you understand it carries all through the case: Do not discuss this case with anyone; do not permit anyone to talk to you about this case while it is in progress. If anyone should attempt to talk to you about this case while it is on trial, report that back to the Court immediately. Do not make up your minds in the case until you have heard all of the evidence, both on behalf of the plaintiff and on behalf of the defendants, until you

have heard the arguments of counsel and finally the law as the Court will charge you, as it applies to this case, as I understand it to be. Keep your minds free and open; listen to all that is submitted to you from the witness stand.

Now I am about to adjourn, to recess the further hearing of this cause. As I understand, it is agreeable to counsel on both sides that we adjourn now, having secured our jury, until 2 o'clock on Monday afternoon. Is that satisfactory to the government?

Mr. Canny: If your Honor please, does your Honor have some reason not to take up on Monday morning?

The Court: Yes, I have.

Mr. Canny: Then it is agreeable.

The Court: Some of the other matters here before the Court, I think it will give counsel from out of town, if they agree to do so, an opportunity to come on Monday, especially these gentlemen from Cincinnati and possibly these other gentlemen, too, without having to come on Sunday, as much as we would like to have them in Dayton. We will adjourn the further hearing of the case in a moment until 2 o'clock Monday afternoon. That will be the 12th day of May.

Now, all of the other Ladies and Gentlemen who are in the room as prospective jurors, please remain seated, but you Members of the Jury may now be excused and return, if you please, on next Monday afternoon.

Thereupon the jury retired from the court room and after the court had excused the prospective jurors who were not needed to fill the panel in this case, court was adjourned until Monday, May 12, 1952, at 11 o'clock a. m., this case being adjourned until 2 o'clock p. m. Monday, May 12, 1952.

Proceedings

Afternoon Session.

Monday, May 12, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the proceedings in the trial of this cause were resumed.

The Court: I think we have reached the stage, Gentlemen, where we are ready to have the opening statements of counsel. The government may state its case.

Mr. Aug: Very well, your Honor.

The Court: Gentlemen, I am not sure exactly what our record shows. At an earlier stage, quite an early stage the two defendants each entered a plea of not guilty, Mr. Hollifield here in Dayton, as I recall, Mr. Opper came to Cincinnati while I was holding court there and entered his plea there. But in the meantime there have been some motions and other things filed and I am not exactly sure what the record—if the record is clear about it. So I think to save any question, it would be just as well if we have the defendants, now before we make the opening statements, enter their plea and then we will know exactly where we stand.

Mr. Canny: On behalf of the defendant Opper we enter a plea of not guilty to all the counts of the indictment.

The Court: All right.

Mr. Svoboda: On behalf of the defendant Hollifield we enter a plea of not guilty to all counts.

The Court: That makes up the issue. There can't be any question. Very well. Now counsel may proceed.

* * * * * * *

The Court: Now, Members of the Jury, we are about to recess the further hearing of this cause until tomorrow morning at 11 o'clock.

During this time you will bear in mind the admonition I gave you the other day; do not talk about the case to

anyone: do not permit anyone to talk to you about it. If anyone even attempts to talk to you about this case while it is in progress you must report that fact to the Court. Do not make up your minds until you have heard all the evidence and the arguments of counsel and the charge of the Court, and until the case is finally submitted to you for your consideration and determination.

Will counsel please remain just a moment about another matter?

The jury may be excused and return, if you please, at 11 o'clock tomorrow morning.

Thereupon the jury retired from the court room and the following proceedings were had out of the hearing and presence of the jury:

The Court: Gentlemen, I asked counsel to remain just a moment for this reason: Rule 30 provides, as you Gentlemen are well aware, that at the close of the evidence, or at any earlier time during the trial as the Court reasonably directs, any party may file written requests to instruct the jury on the law as set forth in the requests.

Now, I don't know, of course, that either side, or any of you Gentlemen, either the defendants or government, have any special requests. I am asking you now in plenty of time. I do not mean I want them tomorrow or the next day, but within a reasonable time I would appreciate it if you have any, so I can go over them myself, and the other side—you can exchange them, if you will, and the other side can go over them and if you have any objection, of course, I will hear you.

There are some things, Gentlemen,—you are perfectly welcome to submit your special charges, if you wish. I do not mean to deprive you of the right, but sometimes I get requests to charge that a man is presumed to be innocent until he is proven guilty. Well, I learned that among the first things when I started in law school, many years ago. And the question about reasonable doubt, of course, I always charge reasonable doubt. In fact, I cite the Ohio

statute on that subject, which I think is about as complete a definition as you can get. Even so, you may give them to me if you wish. I can't deprive you of it. But on the other hand, it takes up your time and mine about many things of that kind that I think are unnecessary.

Now, there may be some other matters that you feel that the Court might overlook and possibly I might, which you would like to call my attention to. I would be very glad to have your advice and help in that case.

Now, I don't know what the rule is in other districts but for the benefit particularly of these Gentlemen from out of the city, from out of our district anyhow, as the other lawyers here know, it is my practice always, I do not give special charges as such. Any charge that you submit to me, if it is all agreed to, I mean if there is no objection or if I overrule the objection on either side, I will put that in my general charge, you understand. Of course, you will be perfectly free to say to the jury that the Court will charge you thus and so. I know the practice used to be years ago in our state court, we used to get up and use our special charges as our text for the argument, if we didn't have anything else to talk about, flash this paper before the jury and try to scare them to death with our special charges. I don't do that here.

I will incorporate anything that you give me that is not objected to or that—even if it is objected to and I overrule it, then I incorporate all that in my general charge as you will see.

There is no rush. I am not hurrying you. You can keep it in mind as you go along. This will give you a little opportunity to think about it.

We will adjourn court then until 11 o'clock tomorrow morning.

Thereupon the further proceedings in the trial of this cause were adjourned until tomorrow morning at 11 o'clock.

Proceedings

Morning Session.

Tuesday, May 13, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this case proceeded as follows:

(Out of the hearing of the jury):

Mr. Canny: Both the defendants would like to have an understanding that an objection during the course of the trial, entered by one of the defendants, will inure to the benefit of both.

The Court: Oh, sure, certainly. That is agreeable to the government?

Mr. Aug: Yes.

(In the hearing of the jury):

The Court: Gentlemen, I don't know that you care at all for a separation of witnesses.

Mr. Canny: That is what we are discussing now with opposite counsel.

The Court: If you do, I would rather start the rule now rather than halfway through the case.

Mr. Canny: We are discussing that phase of it now.

The Court: Of course, the defendants themselves will be in court, will be required to be, and somebody, whoever it may be, I don't care who it is, somebody can stay in representing the government in addition to the District Attorney's office, somebody that will be of some help to you with your papers and gather the things in shape for the trial. Outside of that, if you want a separation, I will order it.

Mr. Aug: I think counsel agreed on both sides, if the Court please, that we should have a separation of wit-

nesses. I think the government is entitled to have Mr. DeNeale, a representative of the F. B. I., at its table and, of course, the defense will have the two defendants and the stenographer.

The Court: Oh, certainly. Now, everybody in the court room who expects to be or if you think you might be called as a witness, whether you are subpoenaed or not, if you are going to be a witness in this case, please retire to the witness room. Do not come back in here and do not go around the hall and come up close to the door or anything of that kind. I want you to keep away entirely from the doors until you are called as a witness. Counsel will have to tell me about the rest of the people. Of course, I haven't the faintest idea who is going to be a witness and who is not.

Mr. Kelley: I am here on behalf of the defendant Opper. As to every person who we know or have reason to believe will be a witness for the defense, we will issue the same instructions to them, if the government will do the same.

Mr. Svoboda: The same for Mr. Hollifield.

Mr. Aug: We will do the same. I see no government's witnesses in the court room at the present time.

The Court: Very well. Counsel may proceed.

Mr. Aug: Call Mr. Kistner.

And thereupon

JEROME KISTNER, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. What is your name?
A. Jerome Kistner.

The Court: How do you spell your last name?

The Witness: K-i-s-t-n-e-r (spells).

Q. What is your first name?

A. Jerome.

Q. Jerome Kistner. Where do you live?

A. Wilmington, Ohio.

Q. What is your present employment, Mr. Kistner?

A. I am the Acting Chief of the Contract Distribution and File Section.

Q. How long have you been in that capacity?

A. I have been in that capacity for about three months as acting chief. Normally I am civilian chief under a military head of that particular section. I have been there for about two or two and a half years.

Q. This employment is where?

A. At Wright Field.

Q. Now can you describe briefly your duties?

A. My duties, I have two functions, one to make distribution of the official signed copies of contracts and, two, to maintain the contract files, the official files of those contracts.

Q. You are the custodian of the files?

A. Yes, sir.

Q. Now, in such capacity did you have in your possession a purchase request No. 119,443?

A. 119,443, yes, sir.

Q. Did you have in your possession purchase request 119,432?

A. 119,432, yes, sir.

Q. Did you have in your possession purchase request 133,766-C?

A. 113,766-C, yes, sir.

Q. Purchase request 133,709?

A. I have 133,709-C.

Q. You had that in your possession?

A. Yes, sir.

Q. You have purchase request 127,196?

A. I have 127,196-C.

Q. You had that in your possession?

A. I did.

Q. Did you have in your possession the files relating to contract 17438?

A. I believe you should include the station code number.

Q. Very well. Did you have in your possession contract AF33(030) 17438?

A. I did.

Q. Did you have in your possession contract AF33(038) 18136?

A. I did.

Q. Did you have in your possession contract No. AF33(038) 16916?

A. I did.

Q. Did you have in your possession contract AF33(038) 26634?

A. Yes, sir.

Q. Did you have in your possession contract AF33(038) 26641?

A. Yes, sir.

Q. Did you have in your possession contract AF33(038) 29089?

A. I did.

Q. All of those purchase requests and contracts to which we have just referred, do you now have them in your possession?

A. No, sir.

Q. When did you part with the possession of those documents?

A. On April 30, 1952.

Q. Will you tell the jury the circumstances under which you gave up the custody of those documents?

A. Mr. John J. DeNeale, of the Federal Bureau of Investigation, requested those documents from me and I turned them over to him.

Q. Do you have a receipt?

A. I do. (Produces)

Q. Will you identify that paper which I have just handed you?

Mr. Kelley: Has it been numbered?

Mr. Aug: No.

A. This piece of paper is a signed receipt of Mr. John B. DeNeale.

The Court: Do you want to offer it in evidence?

Mr. Aug: Will the stenographer mark this as Government's Exhibit No. 1 for identification?

Thereupon said receipt was marked for identification as Government's Exhibit No. 1.

Mr. Aug: We will offer it in evidence.

Mr. Kelley: May I inquire as—

The Court: It is a receipt. Yes, you may inquire, of course.

By Mr. Kelley:

Q. Mr. Kistner, on direct examination, your attention was directed to some five purchase requests by number and to six contracts by number. You stated that you had those in your possession and had relinquished possession to Special Agent J. B. DeNeale. That is Mr. DeNeale who is here at this table. This receipt that has been offered in evidence lists other documents than those to which your attention was directed, does it not?

A. It does.

Q. What are the documents listed there that have not yet been referred to?

A. Those are other contract files, purchase requests, one invitation for bid, which I turned over to Mr. DeNeale.

Q. What are the items in the column to the far right that you identified?

A. The number of folders.

Q. And what else?

A. And the contents of the folders.

Q. Don't you also make reference to correspondence files?

A. That is the contents of the folder: One file, contract and correspondence.

Q. Is the correspondence maintained in a separate jacket from the contract file?

A. In several instances it could be and in some instances not. These files are set up that if the folder is small the contract and the correspondence is maintained in the same file folder. If the file becomes large the contract is maintained in one folder and the correspondence in a separate folder.

Q. Have any of those documents up to this date ever been returned to your custody or to the custody of someone who you superintend?

A. Since April 30th?

Q. Yes.

A. No, sir, not to my knowledge.

Q. As far as you know, they continue to be in the exclusive custody of the man to whom you delivered them, Mr. DeNeale?

A. Right.

Q. Among the contracts that you identified was the contract AF33(038) 16916, was it not?

A. Yes, sir.

Q. Can you account for the fact that that contract file was exhibited to me at Wright Field last week by Army personnel?

A. Last week?

Q. Approximately last week. Within I will say the last fifteen days.

A. No, sir, I could not.

Mr. Kelley: If the government please, may you state for what purpose this receipt to which you have referred only certain of it is offered in evidence?

Mr. Aug: We are willing to agree all the items listed in there were turned over to Mr. DeNeale.

Mr. Kelley: If the inference is to be that they continued in Mr. DeNeale's custody without interruption, I object

to its introduction upon the grounds that is not the fact and this witness cannot establish that.

The Court: I don't see any necessity of introducing it in evidence. It is marked as an exhibit. It is simply a receipt. It has been received from Mr. DeNeale. Any point about putting it in evidence?

Mr. Aug: It ties up the fact that these files were turned over to Mr. DeNeale.

The Court: He has testified to that and this seems to bear that out and counsel objects to its going in evidence. I don't see why we don't leave it marked for identification. It is not in evidence then. He has testified to the contracts that appear on here that you turned over to Mr. DeNeale.

The Witness: Right.

The Court: So we will leave this temporarily, at least.

Mr. Aug: Counsel for defense has said we have referred to five PRs. It is my understanding we have had the witness testify to six purchase requests. In order that there may be no question about that, I would like to run over those PRs again and ask whether he has that purchase request in his possession.

The Court: What is it you are asking about now?

Mr. Aug: It was my thought, I had asked him if he had six purchase requests in his possession. Mr. Kelley has said that the witness had testified as to five purchase requests. In order that there be no question about it, I want the record to show that Mr. Kistner had in his possession six purchase requests.

The Court: 119,432, is that your first one that you are asking about?

Mr. Aug: Yes.

The Court: All right. Now let's follow these along with the counts, if you please. That is the purchase request that is referred to in Count 1 of the indictment and is the first purchase request that is referred to.

Mr. Aug: 119,443 is the first one. That is the one referred to in the first count.

The Court: Where is that?

Mr. Aug: On the first page, at the bottom of Count 1, first page.

The Court: Purchase request 119,443, dated August 17, 1959. That is the last line on page 1 of the indictment and that is in count 1. Now, is that purchase request referred to in here? That is the second one on your receipt of April 30th on this receipt, Plaintiff's Exhibit 1 for identification.

The Witness: Yes, sir.

The Court: Now the next purchase request in count 1 is 119,432. That is on page 2 of the indictment. Is that correct, Mr. Aug?

Mr. Aug: That is right, your Honor.

The Court: Is that on your receipt?

The Witness: Yes, sir.

The Court: Now in count 2.

Mr. Aug: Judge, there is another purchase request in count 1. It is 119,450.

The Court: That is right. That is on your receipt?

The Witness: Yes, sir.

The Court: Now, any more in count 1, purchase requests, I mean.

Mr. Aug: No, your Honor, no more purchase requests.

The Court: Now, what is the first one in count 2, according to your papers there, according to the indictment as we have it?

Mr. Aug: 133,766-C.

The Court: All right. Now that is in the second count of the indictment.

Mr. Aug: Yes, your Honor.

The Court: Very well. That is on your receipt.

The Witness: Yes, sir.

Mr. Aug: The next one is 133,709. That is still in the second count.

The Court: 133,709-C. That is on your receipt?

The Witness: With the C it is on here.

Mr. Kelley: At this stage, does that refer to two different purchase orders, one with the C and one without it?

The Witness: It does.

Mr. Kelley: Then you don't have it here.

The Court: On the receipt.

Mr. Kelley: Not the one named in the indictment, your Honor.

The Court: In the second count of the indictment the purchase order that is referred to is purchase request 133,709, dated December 30, 1950.

Mr. Aug: Yes, your Honor.

The Court: Whereas in the receipt it shows 133,709-C, has the letter C attached to it. Do you know of your own knowledge whether or not those are the same documents, or don't you?

The Witness: They are not the same documents, your Honor. They are referred to in the contract.

The Court: You mean, one without the C and one with the C?

The Witness: No, just the one with the C.

The Court: Is referred to in the contract?

The Witness: Yes, sir.

The Court: All right. Go ahead.

Mr. Aug: The other PR then is 127,196.

The Court: That has a C also attached to it in the receipt. That is correct, isn't it?

The Witness: Right.

The Court: Now, with the C attached to it, it is in the receipt. The second count refers to it as purchase order 12719, that is, without the C being on.

Mr. Aug: Those are the six purchase requests, your Honor.

The Court: Are there any purchase orders referred to in count 3?

Mr. Aug: 127,196 is the last one, your Honor, that is referred to in count 3.

The Court: In count 3, it again refers to purchase order 127,196, dated January 2, 1951, without the letter C on it, which appears in this receipt. Are there any other purchase orders now in count 3?

Mr. Aug: Purchase request? No, your Honor. Those are the six that this witness has testified about.

The Court: Are there purchase orders referred to in count 4?

Mr. Aug: They are all referred to but they have already been covered by the ones in that receipt.

The Court: Let's get back to the contracts.

Mr. Aug: The contracts are all right. There was no question about the contracts.

The Court: They might be all right as far as you are concerned, but not as far as I am concerned. I am going to get this straightened out for myself, too. What is the first contract in count 1?

Mr. Aug: 17438.

The Court: 17438 dated November 16, 1950. That you have?

The Witness: Yes, sir.

The Court: Of course, they all have AF33(038).

The Witness: That is right.

The Court: Ahead of all of them. But we won't go into all that detail. That all appears in the indictment. Now the next contract that you have in the first count—What is your next contract in the first count?

Mr. Aug: 18136.

The Court: All right. Now, that was dated December 18, 1950, according to the first count of the indictment. All right. Now your next contract in the first count?

Mr. Aug: 16916.

The Court: All right. Now that is all the contracts in count 1 referred to.

Mr. Aug: That is correct, your Honor.

The Court: Now let's come to count 2. What is the first contract referred to in count 2?

Mr. Aug: 17,438 is again referred to; 18,136 is again referred to.

The Court: Those two we have already had.

Mr. Aug: And the new one is 26,641.

The Court: All right. Dated May 31, 1950, according to the allegation of count 2 of the indictment.

Mr. Aug: And 26,634.

The Court: 26,634, that is in count 2, yes. All right. Dated June 4, 1950. Now the third count, what contracts do we have?

Mr. Aug: We have the 17,438 referred to before; we have 18,136; we have 26,641 and—

The Court: And 16,916, that is one we have had before.

Mr. Aug: 26,641.

The Court: We had that before. All right. That is count No. 3.

Mr. Aug: 26,634 is also in there, your Honor.

The Court: All right, dated June 4, 1951. Now count 4, what contracts are referred to?

Mr. Aug: Again 17,438.

The Court: That is on the receipt.

Mr. Aug: 18,136.

The Court: Yes, sir.

Mr. Aug: The new one is 29,989.

The Court: All right. June 26, 1951, acording to the indictment. Is that all of them in count 4?

Mr. Aug: Yes, your Honor. 16,916 is in there and 26,634.

The Court: I want all the contracts in each count as we come along now, then we will have our record made up.

Mr. Aug: 17,438, 18,136, 16,916.

The Court: All right.

Mr. Aug: 26,634.

The Court: 26,634, yes, sir.

Mr. Aug: 29,989.

The Court: 29,989. All right. Now that is all the purchase orders by number and all the contracts by number and date as appears in the counts 1 to 4, respectively.

Mr. Aug: That is right.

The Court: Leave that with our reporter and she will return it eventually. It is just marked now for identification.

Mr. Aug: I don't want to excuse this witness yet. I would like to ask him one or two more questions.

Mr. Kelley: I had not concluded my intermediary examination.

Mr. Aug: I don't think I had concluded my direct examination, if the Court please.

The Court: You asked him questions on the voir dire about the admissibility of this and you objected to it. I sustained your objection.

Mr. Kelley: I will withdraw and wait for cross then.

The Court: If they wish to examine him some more, you may cross-examine him all you wish.

Mr. Kelley: I will wait for cross.

By Mr. Aug:

Q. Mr. Kistner, you testified you worked out at Wright Field. Are you an employee of the federal government?
A. I am.

Mr. Aug: We are through with the witness.

Cross-Examination, by Mr. Kelley.

Q. You had an opportunity a few moments ago to follow with his Honor certain numbers as to purchase requests that were set forth in the indictment, didn't you?

A. Yes, sir.

Q. Do I understand then it to be the fact that there are two purchase requests set forth in the indictment that you did not deliver to the F. B. I. agent, Mr. DeNeale.

A. By the exact number.

Q. Well, I wish to be exact.

A. The two that you refer to did not have a C on them.

Q. And you say they are different files?

A. I would say that they were.

Q. So then the answer to my question was that you did not deliver two purchase requests that had been enumerated in the indictment?

A. As enumerated, yes, sir.

Q. You did or did not? I mean as enumerated.

A. As enumerated in there, I did not deliver a document by that number.

Q. And to your knowledge, there are two separate documents, each bearing the same numerals, but one having the letter C and the other not?

A. I have no exact knowledge, because I didn't check over the documents without the C.

The Court: Please give us those numbers, will you?

Mr. Aug: Your Honor, you will have to refer to the indictment. I don't know exactly which ones they were.

Mr. Kelley: I have them, your Honor.

The Court: Well, which ones were they?

Mr. Kelley: The indictment lists a purchase request.

The Court: That is in count what?

Mr. Kelley: In count—I am afraid I am not prepared to answer as to count, but I can give you the number, 133,709.

The Court: 133,709. All right.

Mr. Kelley: The receipt bears those numerals but with the addition of a C.

The Court: Now let's find out. If we don't do this, Gentlemen, we are going to get lost in the maze.

Mr. Kelley: Counsel suggests that is in count 2.

The Court: 133,709. Now the indictment, count 2 in the second paragraph thereof, on page 2 says, "and purchase request 133,709, dated December 30, 1950". Now what you have turned over to Mr. DeNeale there is a document which your records show was numbered 133,709-C. That is correct, is it not?

The Witness: Yes, sir.

Mr. Kelley: The other similar discrepancy is No. 127,196.

The Court: What count is that in?

Mr. Kelley: Count 2 likewise.

The Court: Also in count 2. 127,196. Yes, I see it, 127,196. So that the indictment says it is purchase request 127,196, whereas your receipt shows a document that was numbered 127,196-C.

The Witness: Yes, sir.

The Court: Very well. Now you may go ahead. You may examine him about it any way you wish.

Mr. Kelley: Will the Court excuse me one moment?

The Court: Yes, certainly.

Mr. Kelley (after conferring with co-counsel): That is all.

Redirect Examination, by Mr. Aug.

Mr. Aug: Mark this as government's for identification Exhibit No. 2, please.

The Court: Did you want to inquire?

Mr. Svoboda: No inquiry, your Honor.

The Court: That is what Mr. Canny spoke to me about earlier, he and Mr. Aug. But any time that you wish to

examine any of these witnesses, do not hesitate to say so, because you are, of course, entitled to do that, only have one set of lawyers do it at a time, but when the other side gets through, you may be heard. I may not think of it every time. I am extending the invitation now. Not exactly an invitation, you have the right to whether I extend the invitation or not. You let me know, otherwise I will understand you do not care to. Very well.

Q. Mr. Kistner, I am handing you a document which has been marked as Plaintiff's Exhibit No. 2. This is marked for identification. I will ask you to state what number is on that document.

A. 127,196-C.

Q. Now, as to the numbers, is there some difference in the way that that number and the letter is affixed to that document?

A. There is, a letter affixed in ink.

Q. Do you know who would have put that letter on that instrument?

A. No, sir.

Mr. Kelley: I object to the form of that question.

Q. Do you know who put that on there?

A. No, sir.

Q. Do you know what the symbol means, what the letter C means?

A. I have been told.

Mr. Kelley: Object.

The Court: Don't tell us what you have been told. Do you know?

Q. Do you know what the letter C means?

A. No, sir.

Q. After looking at the purchase request numbered 127,196-C, what do you say now as to whether that represents there was more than one purchase request?

Mr. Kelley: Object to that. If your Honor please, the witness has already indicated an inability to answer that question to his own knowledge.

The Court: No.

Mr. Aug: I understand he said there were two.

The Court: He said he didn't know what the symbol C stood for. I think that is a different question from this last one. He may answer the question. If you know, tell us of your own knowledge.

The Witness: I would like to have the question restated, your Honor.

Mr. Aug: Read the question.

(Thereupon the last question was read by the reporter.)

A. I couldn't answer that positively, without checking our files, but I would say—

Mr. Kelley: Just a moment. I object.

The Court: I will sustain that objection. Don't tell us what you would say. You can check your files, can you not?

The Witness: Yes, sir.

The Court: Find out and let us know.

Mr. Aug: Then if we can reserve the right to recall this witness to testify on that question as to these two purchase requests, I see no need for my going through the same set of questions as to this exhibit. I would like to ask that this witness be excused to check his files to see whether there was one or more purchase request.

The Court: See whether there was purchase request 133,703 and also 133,709-C, and see whether there was purchase request 127,196, also another purchase request 127,196-C. Is that right?

Mr. Aug: That is correct.

The Court: That is what you want him to check.

Mr. Aug: That is correct. Through with the witness, your Honor.

Mr. Kelley: May I ask is that the receipt that was marked for identification? May that be left among the court's papers? No questions.

Mr. Aug: The witness is excused then.

The Court: All right. We will see you again when you come back, if you do come back.

And thereupon

MR. JOHN DeNEALE, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. Mr. DeNeale, you know Mr. Kistner; is that correct?
A. Yes, I have met Mr. Kistner.
Q. Have you stated your full name to the jury?
A. No, I haven't. My name is John D. DeNeale.
Q. Where do you live, Mr. DeNeale?
A. I reside in Fairborn, Ohio.
Q. What is your occupation?
A. My occupation is special agent with the Federal Bureau of Investigation.
Q. Now, you heard Mr. Kistner say he had transferred to you certain documentary papers, which we have been talking about; is that correct?
A. I did, sir.
Q. What was the date on which you received them?
A. I received those on April 30, 1952.
Q. I will ask you if on that date you received purchase request 119,432?
A. I would like to refer to that receipt, if I may. (Does so.)
Q. I will ask you if on that date you received from Mr. Kistner purchase request 119432?
A. I did.

Q. I will ask you if you received purchase request 119443?

A. I did.

Q. Did you receive purchase request 119450?

A. I did.

Q. Did you receive purchase request 133766-C?

A. I did.

Q. Did you receive purchase request 133709?

A. The one I received evidently had a C after it in pencil.

Q. What was your answer to that question?

A. The one I received evidently had a C written after it, either in ink or pencil.

Q. Did you receive purchase request 127196-C?

A. Yes, I did.

Q. Did you receive contract No. 17438, with AF—All of these contracts have the prefix AF33(038), so I will refer only to the last numbers. Did you receive contract No. 17438?

A. Yes, I did.

Q. Did you receive contract No. 18136?

A. Yes, I did.

Q. Did you receive contract No. 16916?

A. Yes, I did.

Q. Did you receive contract No. 26641?

A. Yes.

Q. Contract No. 26634?

A. Yes, I did.

Q. Contract No. 29089?

A. Yes.

Mr. Aug: Mark these as Government's Exhibits 4, 5, 6, 7 for identification.

Thereupon four purchase requests were marked for identification as Government's Exhibits Nos. 4, 5, 6, and 7, respectively.

The Court: What is the number of purchase request No. 2 for identification?

Mr. Aug: It is 127196-C.

The Court: Now No. 3?

Mr. Aug: 133709-C.

The Court: Those are the ones the Gentleman is going to check?

Mr. Aug: That is right.

The Court: Now we have Government's Exhibits 4, 5, 6 and 7.

Mr. Aug: No. 4 is 133766-C.

The Court: Where does that appear in our indictment?

Mr. Kelley: Count 2, your Honor.

Mr. Svoboda: Count 2, page 3, second paragraph.

Mr. Aug: It is also in count 3, your Honor.

The Court: Government's Exhibit No. 4, what count does that appear in?

Mr. Aug: It is in counts 2 and 3.

The Court: Now Government's Exhibit for identification No. 5 is purchase order number—

Mr. Aug: —119443.

The Court: Where does that appear, in what count?

Mr. Aug: Count 1 of the indictment. It is only in count 1 of the indictment.

The Court: Now Government's Exhibit No. 6 for identification?

Mr. Aug: 119432. Appears in count 1 of the indictment.

The Court: In any other count?

Mr. Aug: No other count. It is referred to generally in the conspiracy count.

The Court: Now Government's Exhibit No. 7 for identification is purchase order number—

Mr. Aug: —119450.

The Court: And that appears in what count?

Mr. Aug: Count 1. That is all.

The Court: All right. Go ahead.

Q. Mr. DeNeale, I will hand you Government's Exhibit marked for identification No. 4 and ask you to state what that is.

A. This is a purchase request No. 133766 and after it is a C marked in ink.

Q. Can you state whether that is one of the documents that was turned over to you by Mr. Kistner?

A. Yes, it is.

Q. I will hand you Government's Exhibit marked for identification No. 2 and would you state what that is?

A. This is a purchase request No. 127196 and it has a C in it in ink, after it.

Q. Can you state whether or not that was one of the instruments turned over to you by Mr. Kistner?

A. Yes, it was.

Q. I will hand you an instrument marked Plaintiff's Exhibit 3 for identification and ask you to identify that instrument.

A. This is a purchase request No. 133709-C.

Q. I will ask you if that instrument was turned over to you by Mr. Kistner?

A. Yes, it was.

Q. I hand you Exhibit No. 5 marked for identification. Will you tell us what that instrument is?

A. This is a purchase request No. 119443.

Q. And can you state whether or not that instrument was given to you by Mr. Kistner?

A. Yes, it was.

Q. I will hand you Government's Exhibit No. 6, marked for identification, and ask you to identify that.

A. This is purchase request No. 119432.

Q. Can you state whether or not that instrument was given to you by Mr. Kistner?

A. Yes, it was.

Q. I hand you Government's Exhibit No. 7, marked for identification. Will you tell the jury what that instrument is?

A. This is purchase request No. 119450.

Q. Can you state whether or not that instrument was turned over to you by Mr. Kistner?

A. Yes, it was.

Mr. Aug: Mark these three as Exhibits 8, 9 and 10.

Thereupon three contracts were marked for identification as Plaintiff's Exhibits Nos. 8, 9 and 10, respectively.

The Court: No. 8, the number of that is what?

Mr. Aug: No. 17438.

The Court: And that appears in what count or counts of the indictment?

Mr. Aug: Count 1. That is also in count No. 2.

The Court: Let's get this accurately, if you will please. Now tell us all again so we get it accurately in the record what counts that No. 17438 appears in.

Mr. Aug: All right, your Honor. It is in count 1 and it is in count 2.

The Court: Yes.

Mr. Aug: It is in count 3.

The Court: Yes.

Mr. Aug: And it is in count 4.

The Court: That takes in about all of them. All right. Now Government's Exhibit No. 9, that is contract number--

Mr. Aug: —18136.

The Court: And that appears—

Mr. Aug: That is in count 1, count 2, count 3, count 4.

The Court: Yes, sir. All right. That is fine. Now Government's Exhibit No. 10 for identification.

Mr. Aug: That is contract 16916.

The Court: And that is in which count or counts?

Mr. Aug: That is in count 1, count 2, count 3, count 4. Mark these 11, 12, 13 for identification.

Thereupon three more contracts were marked for identification as Plaintiff's Exhibits Nos. 11, 12 and 13, respectively.

Mr. Aug: Your Honor, No. 11 is contract 26641.

The Court: And that is in which count or counts?

Mr. Aug: It is in count 2.

The Court: Yes, sir.

Mr. Aug: Count 3 and count 4.

The Court: Exhibit 12 is number—

Mr. Aug: 12 is contract No. 26634.

The Court: And that is it, what count or counts?

Mr. Aug: It is in count 2, your Honor, count 3 and count 4.

The Court: Exhibit 13 is what number?

Mr. Aug: 13 is contract No. 29989.

The Court: And that is in what counts?

Mr. Aug: It is in count 4, your Honor.

The Court: Only count 4?

Mr. Aug: Only count 4. Your Honor, I have handed counsel for defense the exhibits we have just referred to.

They have indicated to me they would like some time to look them over.

The Court: Do you have any more contracts or purchase orders that you wish to have marked for identification so counsel can have them all during our recess?

Mr. Aug: No other purchase requests, no other contracts your Honor. Those are the ones referred to in the indictment.

The Court: Would you Gentlemen like to have a little opportunity to look them over?

Mr. Kelley: Yes, your Honor. We have had no opportunity to examine these. They haven't been offered as yet.

The Court: I understand. If you do wish to object you may want to develop your reason and so forth. I will give you that opportunity. I think you should have the chance now to look them all over. Suppose I adjourn now until 2 o'clock. Is that satisfactory?

Mr. Aug: That is all right.

The Court: That is all for the present. We don't excuse you, but excuse you temporarily.

The Witness: Yes, sir.

The Court: Now, Members of the Jury, as you can see there are some documents here that will be referred to in the testimony in this case, from time to time, and it will take a little while for counsel to look them over and have an opportunity to study them. I think it is quite proper that they should be given that chance and so I will recess the further hearing of this case now until 2 o'clock this afternoon. Now, during this recess period, why, of coarse, you will bear in mind the usual admonition I have heretofore given you. I won't keep on repeating it all the time. You know what it is. Return, if you please, at 2 o'clock this afternoon. Adjourn court until 2 o'clock this afternoon.

Thereupon the further proceedings in the trial of this cause were adjourned until 2 o'clock of the afternoon of the same day.

Afternoon Session.

Tuesday, May 13, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

MR. JOHN DeNEALE resumed the witness stand and testified further as follows, as on **direct examination**:

By Mr. Aug:

Q. Mr. DeNeale, I will hand you what has been marked for identification as Plaintiff's Exhibit No. 8 and ask you to identify that, if you will, please.

A. This is a contract between the United States Air Force and the S. Buchsbaum & Company.

Mr. Kelley: If the Court please, I object to this method of identification, unless it is established that this witness has some greater knowledge than to merely look at it and see what it purports to be. As I understand he just secured possession of the documents. He is not qualified to interpret what it is.

The Court: Of course, he can't interpret what it is. You may answer the question, I think there is no harm, and tell us what it is. It does speak for itself. There is no doubt about that.

Q. What is the number on that contract, Mr. DeNeale?

The Court: I don't think we want to throw all these contracts in the laps of the jurors and say, "Now, Ladies and Gentlemen, they speak for themselves".

Mr. Aug: This witness is merely going to identify this as an instrument he got from Mr. Kistner. That is the purpose of these questions.

The Court: He did identify them.

Mr. Aug: I ask him to identify the contract number.
A. This is contract No. AF33(438) 17438.

The Court: What is the exhibit number of that?

The Witness: 8.

The Court: Pardon me. That is Government's Exhibit No. 8 for identification.

Mr. Aug: That is right.

The Court: Now what is the number on it, contract number?

The Witness: The end number is 17438.

Q. I will ask you, Mr. DeNeale, if you received that instrument from Mr. Kistner?
A. I did.
Q. I will hand you a document marked as Exhibit No. 9 for identification, Plaintiff's Exhibit No. 9, and ask you to identify that instrument.

The Court: You mean to identify it as being an instrument received?

Mr. Aug: That is correct, and to give the contract number.

The Court: All right. Maybe that will save the objection.

A. This instrument was received from Mr. Jerome Kistner and it is marked Contract AF33(038) 18136.
Q. I will hand you an instrument marked Plaintiff's Exhibit No. 10 for identification and ask you to identify that instrument.
A. This instrument was also received from Mr. Kistner and it is marked Contract AF33(038) 16916.

The Court: That is Exhibit No. 10 for identification.

Mr. Aug: Exhibit No. 10 for identification, yes, your Honor.

Q. I will hand you an instrument marked Plaintiff's Exhibit 11, marked for identification, and ask you to state what that instrument is.

A. This instrument was received from Mr. Kistner and is marked Contract AF33(038) 26641.

Q. I will hand you Plaintiff's Exhibit No. 12, marked for identification, and ask you to identify that instrument.

A. This also was received from Mr. Kistner. It is marked Contract No. AF33(038) 26634.

Q. I will hand you an instrument marked Plaintiff's Exhibit 13, marked for identification, and ask you to identify that instrument.

A. This was received from Mr. Kistner and is marked Contract No. AF33(038) 29989.

Q. Mr. DeNeale, here is an exhibit marked Plaintiff's Exhibit 1 for identification. I will ask you to identify that instrument.

A. This is a receipt that I gave Mr. Jerome Kistner, Wright-Patterson Air Force Base, July 30, 1952, when I received various contracts and purchase requests from him at Wright-Patterson Air Force Base.

The Court: What date was that?

The Witness: April 30th.

The Court: I thought you said "July".

The Witness: April 30th.

Q. You are stating you got these purchase requests and contracts on what date?

A. April 30, 1952.

Q. Have then been in your possession since April 30, 1952?

A. They have.

Q. What would you do with them at night?

A. I would lock them in my file cabinet.

Mr. Aug: Your Honor, at this time, we would like to offer in evidence the instrument identified as Plaintiff's Exhibit No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12 and No. 13. Those are the purchase requests and the contracts which have been testified to by Mr. DeNeale and Mr. Kistner.

Mr. Kelley: We will object to the introduction of each. But at the outset I should like to suggest to counsel for the government that these are not the instruments that have been presented to the other witness. There had been only two exhibits marked for identification when the other witness left the stand. None of these other purchase requests have ever been submitted to the witness Kistner.

The Court: I will sustain the objection to Government's Exhibits 2 and 3 for identification, because those are the ones without the letter C on them and Mr. Kistner was to come back and tell us about them later on.

Mr. Aug: We intend to have him here later on in the afternoon.

The Court: Until he comes to get that cleared up, I will sustain the objection.

Mr. Kelley: I have additional grounds which I wish to be heard on beyond that, your Honor. I wish to add further that as to Exhibits 3 through 13 they have never been submitted to the witness Kistner at all. He left the stand before they were ever marked.

The Court: He testified he got them from him. I will overrule the objection to all these exhibits excepting 2 and 3. Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are all admitted in evidence over the objection of counsel for defendants.

Mr. Kelley: Your Honor, I respectfully refer to the fact I had not yet expressed myself fully on my grounds of objection. May I make my record?

The Court: I am sorry. I thought you had finished.

Mr. Kelley: No, sir. I have several other grounds for objection which perhaps will take me some five minutes to recite. May we make it at the Bench or would you prefer to have me make it here?

The Court: All right. Go right ahead.

Mr. Kelley: Do you suggest I make it from here or at the Bench?

The Court: Yes. Go ahead. Members of the Jury, you understand all you are interested in is what the witnesses testify to and the Court will charge you as to the law. What counsel may state as to their objections, they have a perfect right to state; they have a right to make up their record. Anything in their statements has nothing to do with your consideration of this case at all. They are purely a matter of law. Counsel are entirely within their province to make their objections and state them and I think now is the time to do it.

Mr. Kelley: If the Court please, as to Government's Exhibits 4, 5, 6 and 7, which purport to be purchase requests, as to those, we object to their receipt in evidence upon the ground that they are neither relevant nor material to any issues established by the indictment. They do not serve in the slightest degree to support the allegations of the indictment as respects the commission of a crime.

Now, as to the contracts, so-called contracts which have been marked for identification Exhibit 8 through Exhibit 13, I interpose my objection at one stage and the Court ruled. I have as yet had no opportunity to interrogate the witness concerning any of those exhibits on a voir dire. They are referred to as contracts. No one in this court has undertaken to say what they are. We merely have testimony that this man received them from Wright Field period. That is all.

The Court: He started to tell us a while ago there were some contracts. I will overrule the objection. They are admitted in evidence over the objection of counsel for

defendants and the jury will consider those documents as evidence in this case.

Mr. Kelley: I wish to be respectful, sir, but may the record show my request for voir dire has been denied?

The Court: Yes, sir. You may cross-examine him all you wish but I am not going to stop on every paper admitted here and have a voir dire examination or we will not be through in time for them to repaint and redecorate this building, which starts on the 1st of July. Go ahead.

Mr. Kelley: Your Honor, may I make this statement: I understand the rule that an exception need never be noted in this court to any of the Court's rulings?

The Court: No, they don't have to be. They are always welcome and I always note them for counsel myself, but there is no law requires it. The rules now state it isn't necessary. However, if you wish to take your exceptions, you may always do so, but it isn't necessary like it used to be under the old law. Go ahead.

Thereupon the said four purchase requests being Nos. 133766, 119443, 119432 and 119450, respectively, and five contracts beings Nos. 17438, 18136, 16916, 26641, 26634, and 29989, respectively, were admitted in evidence and marked as Plaintiff's Exhibits Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, respectively.

Mr. Aug: Through with the witness, your Honor.

Cross-Examination, by Mr. Kelley.

Q. Mr. DeNeale, I hand you what have been marked and received in evidence as Government's Exhibits 8 through 13. Is it your testimony that each of those exhibits constitutes a contract between the United States Government and some individual?

Mr. Aug: Objection. Now, your Honor, we are getting into exactly what Mr. Kelley would not let us get into and to what we had no intention of getting into. We intended

to authenticate those records and have them admitted in evidence. If we develop what those contracts are, it will be by a different witness.

The Court: I will sustain the objection. The documents speak for themselves. I think that is what counsel stated. I think that is true. We can't do it all at one time. I will sustain it.

Mr. Kelley: I may not inquire of this witness as to what they are and he is the only man who has identified them.

The Court: I will sustain the objection. Go ahead.

Mr. Kelley: Exception noted, please. In view of the ruling, there will be no further cross-examination.

Mr. Aug: We would like to excuse this witness with permission to call him back at a later time to develop other phases of this case.

The Court: That is all right.

Mr. Aug: Call Ruth McCally.

And thereupon

RUTH E. McCALLY, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. Will you state your full name?
A. Ruth Evan McCally.

The Court: Miss or Mrs.?

The Witness: Mrs.

Q. Where do you work?
A. Civilian Personnel Division, Wright-Patterson.
Q. Are you a government employee?
A. Yes, sir.
Q. Do you live in Dayton?
A. Yes, sir.

Q. How long have you been out at the Field?

A. I have had two periods of employment, the first one from 1941 to 1947 and the second period from 1949 until the present time.

Q. Now will you describe briefly what your duties have been since the year 1949?

A. When I first went back to the Field I was in the Personnel Department, Civilian Payroll. Since July of 1951 I have been with the Civilian Personnel Division, in charge of the Civilian 201 Files, official personnel folders.

Q. What is the 201 file?

A. Official personnel folder for the civilians of the Wright Air Development Center.

Q. And those files are in your custody?

A. That is right, they are.

Mr. Kelley: If the Court please, it is our informal understanding that counsel for the government intend to offer this entire jacket. It consists of many many pages. We have never seen it before. It relates to the personal history of one of the defendants and I must request some time to examine it. It is rather voluminous.

Mr. Aug: It is our purpose to expedite this, to have the file introduced and ask this witness to read from just parts of this file. Now, rather than tear the whole file apart and get the parts we want of this personnel file from out at Wright Field, this witness is qualified to investigate this file and answer questions.

The Court: You are not going to offer it in evidence.

Mr. Aug: The simplest way would be to offer it in evidence and have her comment.

The Court: You are not going to offer it in evidence.

Mr. Aug: I had planned to.

The Court: The whole file?

Mr. Aug: Well, if I don't do it that way, I have to pull the file apart.

The Court: No, I don't think you do. I think you can have the file marked for identification and let her read so much of it as is pertinent to this case. If it is all pertinent, you say everything in there is pertinent to this case, then I am going to have to give counsel time to look into it. I can't expect the Gentlemen to look into it without an opportunity. If you just want to have parts of that not offered but simply read from, marked for identification, I think it will take care of it, if you care to do that.

Mr. Aug: Mark it as Government's Exhibit No. 14 for identification.

Thereupon said folder was marked for identification as Plaintiff's Exhibit No. 14.

Q. Mrs. McCally, will you take possession of that exhibit marked for identification Exhibit 14 and tell the jury what that file purports to be?

A. Personnel folder and contents pertaining to the personnel while the employee is at the Field. It shows his date of appointment, his oath of office, any changes in pay while he is at the Field, his date of resignation, the reason for resignation or separation, I should say, type of separation.

Q. Will you tell the jury whose file it is?

A. This is the file of Robert G. Hollifield.

Q. Will you examine that file and tell the jury when Mr. Hollifield was first employed as an employee of the Federal Government, at Wright Field?

Mr. Kelley: If the Court please, I should like to interpose an objection to this question. We have no objection, of course, to its being identified, but now if counsel seeks to come to one part of that and have her read it into the record, I think he should offer that part in evidence first and give us a chance to look at it.

The Court: He is asking her to read it now in evidence.

Mr. Kelley: But no part is in evidence. It is not offered as yet. We haven't seen that part.

The Court: Have you got the part to answer his question?

The Witness: Yes, sir, I have.

The Court: All right. Don't read it. Take it down and show it to counsel. Just show the part you are going to read. You go down there and show exactly what you are going to read.

The Witness (Does as requested by the Court.)

Mr. Kelley: Do I understand that the government is offering in evidence so much of the record as this witness will testify to now, in response to your question, from this page?

The Court: No. They are not offered in evidence at all. She is going to read from a document that has been marked Government's Exhibit No. 14 for identification.

Mr. Kelley: No part of which has yet been received in evidence.

The Court: It will be if you give her a chance to read it.

Mr. Kelley: The very fact of her reading it places it in evidence, your Honor.

The Court: Sure, exactly. What do you wish me to do? You object to it all going in and I think properly so, because there may be many things in there are not pertinent here. Now they have reached one place that they think there is something pertinent. Instead of tearing that out of that file, we are going to have this lady read it. Is there objection to that?

Mr. Kelley: No. I take it, however, so much of this record is actually being read into evidence through this witness. So, a certain portion of this, without physically removing it, is being offered and received in evidence. I can't understand it any other way.

The Court: Have you asked her the question to read that?

Mr. Kelley: There is merely a question to read from a document.

The Court: I will overrule the objection. Let's get along with our case.

Mr. Kelley: If your Honor please, we feel we are only performing our duty in this case.

The Court: I understand you are. Go ahead.

A. Mr. Hollifield's confirmation of probational appointment, November 14, 1941.

Q. Now will you examine that file, Mrs. McCally, and state whether from an examination of that file Mr. Hollifield is an employee of the Federal Government in July of 1950?

Mr. Kelley: If the Court please, for the record, I must state my objection, technical though it may be. I object to her reading anything from that record until the portion from which she reads has been offered and received in evidence.

The Court: Very well. I will overrule the objection. Go ahead.

A. July of what year?

Q. 1950.

A. Yes, sir, he was an active employee.

Q. Beg pardon. That means they are on the payrolls actively employed.

A. That is right.

Q. In what capacity?

The Court: When was this?

Mr. Aug: July 1950.

The Witness: July 1950.

A. He was a designer, aviation equipage.

Q. Can you examine that file and tell us if he remained in that capacity until the time of his resignation or separation from the Field?

Mr. Kelley: Same objection, if your Honor please.

The Court: Very well. It is overruled.

A. He did not. He received a promotion effective October 1, 1950 from a designer, aviation equipage, to a designer supervisor, aviation clothing and equipage.

Q. Will you examine that record and tell us, if you can, please, the time of his discharge or separation from the Field?

A. He resigned effective September 27, 1951 in lieu of removal.

Mr. Kelley: Your Honor, to avoid repetition, may it be understood my objection goes to every question of this nature, requiring her to read from the exhibit?

The Court: All right. I will overrule the objection.

Mr. Kelley: May it be understood my objection goes to it all? I won't have to repeat it each time.

The Court: That is right. What is the date?

The Witness: September 27, 1951.

Q. Would you turn please to the page which indicates the promotion of October 30, 1950?

A. It is October 1st.

Q. October 1, 1950.

A. That is the official document there.

Mr. Aug: If your Honor please, we would like to offer in evidence that portion of the plaintiff's exhibit marked No. 14 for identification, which is entitled "Notification of Personnel Action".

The Court: Do you want to take it out of there?

Mr. Aug: We will take it out.

The Court: Make that 15.

Mr. Aug: We offer it in evidence, if the Court please.

The Court: All right. It may be admitted.

Mr. Kelley: Has it been received?

The Court: Yes. That is what I understood.

Mr. Kelley: It has never been tendered to us even for examination, your Honor.

The Court: Please show these things to counsel for defendants, so there won't be any more time taken about these documents, and show them to counsel for both defendants separately—each and separately and respectively.

Mr. Kelley: No objection as to defendant Opper.

Mr. Svoboda: No objection as to defendant Hollifield.

The Court: It may be admitted without objection.

Thereupon said document entitled "Notification of Personnel Action", dated September 30, 1950, was admitted in evidence, marked as Plaintiff's Exhibit No. 15.

Q. Mrs. McCally, will you turn to that portion of the personnel file which relates to the resignation or separation of Mr. Hollifield from the Field?

A. Yes, sir. Right here it is.

Q. May I have it?

A. (Witness hands document to counsel.)

Mr. Aug: Mark it 16 for identification. "Notification of Personnel Action" is the title of the instrument.

Thereupon said document was marked for identification as Plaintiff's Exhibit No. 16.

Mr. Kelley: May we approach the bench, your Honor?

The Court: Yes, sir.

(Out of the hearing of the jury):

Mr. Kelley: Would your Honor acquaint himself with that portion of the exhibit offered? We object to it.

The Court: I think that objection is well taken.

Mr. Aug: May I see it, if your Honor please?

The Court: Why do you have to have that in evidence?

Mr. Aug: I don't think we need it. What I want to do is to get the date of the separation.

The Court: She testified he resigned.

Mr. Aug: These Gentlemen have been objecting to that testimony. To protect the record I am putting in the evidence from the file. I am not interested in this.

The Court: I can't see the slightest objection in the world to reading from documents marked for identification. I can see nothing wrong about that. I think this is objectionable.

Mr. Aug: We will separate the first page.

(In the hearing of the jury):

The Court: I will sustain the objection to any comments.

Mr. Aug: We are offering so much of that instrument which would show the date of his resignation, if the Court please.

The Court: Can you get a photostatic copy of the upper part of this here and substitute that?

Mr. Svoboda: I will stipulate as to the date of resignation.

Mr. Aug: It has been stipulated that Hollifield resigned from the Field as of the date of that instrument. Now let's make sure we have that.

Q. Would you tell the jury what the date of Hollifield's resignation from the Field was?

A. Resignation effective September 27, 1951.

Mr. Svoboda: We will stipulate as to that date.

Q. Mrs. McCally, from an examination of that file, are you in a position to state whether Hollifield was employed

at the Field during the period from October 1, 1950 until the date of his resignation?

A. Yes, sir. He was employed.

Q. And would you tell the jury in what capacity?

A. You have the title on—that. Effective October 1, 1950 until the date of resignation, he was a designer supervisor, aviation clothing and equipage.

Q. Does it mention the unit he was employed in?

A. At the time of resignation he was in the Research Division, Aero Medical Laboratories, Medical Specialties Branch.

Q. Was he in that division at the time of his promotion?

A. He was not. Beg pardon. He was probably in the same capacity. The title of the division was changed due to the reorganization of the Wright Air Development Center.

Q. Do you have the description—Is there in that file a description of the duties that Hollifield performed out at Wright Field?

A. Yes, sir, there is a job description attached here to this promotion action of October 1, 1950.

Q. Is that attached to what has been identified and admitted into evidence as Plaintiff's Exhibit No. 15?

A. It is.

Q. I will ask you to read to the jury what Hollifield's duties were at Wright Field.

A. "Engineering Division, Aero Medical Laboratory, Medical Specialties Branch, Land Survival Unit. Supervision Received: Works under general supervision of the Chief, Medical Specialties Branch, with opportunity for wide use of creative initiative and independent judgment in planning and supervising the accomplishment of land survival equipment.

"Major Duties:

"1. As Chief, Land Survival Unit, formulates unit policy and assists the Branch Chief in establishing Branch policies and procedures. Represents the Laboratory at meet-

ings with the Joint Aircraft Committee, Aeronautical Board, Bureau of Aeronautics and Air-Sea Rescue Board regarding land survival equipment policies.

"2. Receives and discusses with supervisor, requirements for land survival equipment assigned to or initiated by the Unit. Considers problem and probable approaches; determines personnel to whom assignment will be made. Evaluates proposed development; reaches estimates with respect to time, facilities, personnel, nature and cost of materials, and initiates Expenditure Order to open project.

"3. Makes assignments to subordinates. Coordinates individual or combined efforts of project designers; supervise, assists, offers aid and advice and constructive criticism. Maintains liaison with other laboratory branches, and other laboratories, to insure that survival equipment developed will not conflict with the use or operation of other equipment in aircraft or on crew members.

"4. Reviews and discusses first samples produced to eliminate or concentrate on design ideas with respect to functional suitability; to determine compliance with specifications and drawing requirements. Approves and coordinates the planning and accomplishment of experimental design tests.

"5. Supervises, reviews and approves tentative specifications prepared by subordinates to determine that requirements are adequate. Reviews reports of subordinates for validity and accomplishment of objectives. Receives and initiates or coordinates correspondence to and from AMC laboratories, other government agencies and industrial organizations relating to research, development, procurement, inspection, or pre-standardization testing of assigned projects, in order to keep abreast of new trends in materials.

"6. Prepares monthly and quarterly reports reflecting project status. Evaluates land survival equipment requirements and suggestions received from other AMC activities, other commands, industry, or inventors and initiates action to investigate and or activate development.

"7. Personally designs or develops personal survival kits in addition to other duties.

"8. Performs other duties as designated."

Mr. Aug: We are through with this witness, your Honor.

Mr. Kelley: No cross-examination as to the defendant Opper.

Mr. Svoboda: No cross-examination as to the defendant Hollifield.

The Court: That is all.

The Witness: Who do I return this file to?

The Court: That is marked for identification. Better leave it with Miss Fischer. It is not in evidence, that is, the whole document.

And thereupon

MAJOR ROBERT MELVIN PAULSON, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. Will you state your full name, please?
A. Robert Melvin Paulson.
Q. Where do you live, Major Paulson?
A. 1837 Pinecrest Drive, Dayton, Ohio.
Q. And your employment?
A. I am employed by the United States Air Force, at Wright-Patterson Air Force Base, Ohio.
Q. Can you tell us what you are doing out there at the present time?
A. I am the Chief of the Aerial Reconnaissance Unit of the Armament Section of the Electronics Branch of the Procurement Division.
Q. What were you doing before that?
A. I was chief of the—

Mr. Kelley: I didn't get all of that.

(Thereupon the last A. on Page 92 and top of page 93 was read by the reporter.)

Q. How long have you been employed in that capacity?

A. Since January of this year.

Q. January 1952. What were you doing before that?

A. I was the Chief of the Survival Equipment Unit, Materiels Branch of the Materiel Section of the Procurement Division.

Q. And how long were you in that capacity?

A. I started in that capacity in July of 1951.

Q. Now will you tell us, briefly, what your duties were in that capacity?

A. I was in charge of the procurement of parachutes, survival kits and related equipment, such as aerial drop and aerial delivery equipment for the Air Force and in some instances for the Department of the Army. And in this capacity we procured all of these equipments that I have mentioned before and we administered the contracts that were let. We placed the contracts. We placed them through both advertising and negotiation.

Q. Now, Major Paulson, I will call your attention to contract 17438. Was that a contract over which you had supervision at the time?

A. Yes, that is one of the contracts.

The Court: That is Exhibit 8.

Mr. Aug: Yes, your Honor.

The Court: For our record.

Mr. Aug: That's right.

Q. I will ask you, Major Paulson, if contract 18136 was a contract over which you had supervision?

A. Yes, that was one.

Mr. Aug: That is No. 9, your Honor.

The Court: That is right.

Q. I will ask you if contract 16916 was a contract over which you had supervision?

A. Yes, it was one of my contracts.

Mr. Aug: That is No. 10.

Q. I will ask you if contract No. 26641 is a contract over which you had supervision?

A. Yes, it was one of my contracts.

Mr. Aug: That is No. 11.

Q. I will ask you if contract 26634 was a contract over which you had supervision?

A. Repeat that, please.

Q. 26634.

A. Yes, that is correct.

Mr. Aug: That is No. 12, your Honor.

Q. I will ask you if contract 29989 is a contract over which you had supervision?

A. That is correct.

The Court: That is Exhibit 13.

Q. Major Paulson, I will hand you a document labeled Plaintiff's Exhibit No. 4 and ask you to identify it please.

A. This is a purchase request 133,766, dated 6th of January 1951. It is authority for the procurement of 8500 each kits, emergency sustenance, Aircraft, Type D-1, in accordance with spec. MIL-S-5775A, dated 28th of August 1950.

Q. Now, Major Paulson, can you tell us what a purchase request is?

A. A purchase request is a document initiated by one of the Air Force's activities. In this case, this one was initiated by the Supply Division, to fulfil a requirement that has been generated in some of the operating activities of the Air Force. Evidently from this purchase request I would say one of the operating activities of the Air Force. Now they evidently needed these kits to fulfil some

need in the performance of their mission. Their requirement has been consolidated in one of the supply classes of the Air Force out at Wright Field and they initiate this piece of paper or this document so that a purchase could be effected by the Procurement Division. I might add here that this document also allocates the proper amount of funds for the fulfilment of this purchase.

Q. Is there anything, Major Paulson, on the purchase request which indicates what contract they may ultimately become a part of?

A. Yes. There is a document attached to the purchase request, as required by the regulations of Wright Field, which shows which contract resulted from this purchase request.

Q. Look at the document attached and tell the jury what contract resulted out of that purchase request?

A. On this particular purchase request there were three contracts or three amendments to contracts that resulted. 6000 of the 8500 units on this contract were placed on contract AF26641 with S. Buchsbaum & Company, of Chicago, Illinois. 1250 units were placed by change order to contract AF17438 with the S. Buchsbaum & Company, and 1250 units were placed on contract AF18136 with S. Buchsbaum & Company, of Chicago, Illinois.

Q. Major Paulson, I will hand you—

Mr. Kelley: None of us at our table were able to make a note of what he testified to.

Q. Major Paulson, you have been handed Government's Exhibit No. 5. Will you tell the jury what that is, please?

A. This is purchase request 119443, dated 17th August 1950, for 5000 each kits, emergency sustenance, Aircraft Basic Type D-1, in accordance with military specification MIL-S-5775A, dated 28 August 1950.

Q. Now, Major Paulson, from an examination of that exhibit, can you tell us what contracts resulted as a result of that purchase request?

A. This purchase request does not specifically set aside the units awarded on each contract. However, two con-

tracts did result. The first is AF18136 with S. Buchsbaum & Company, Chicago, Illinois. The second is AF17438 with S. Buchsbaum & Company, Chicago, Illinois.

Q. Major Paulson, I have just handed you Plaintiff's Exhibit No. 6. Would you identify that instrument for the jury, please?

A. This is purchase request 119,432, dated 31 July 1950, authorizing the purchase of 10,000 each sustenance kit, individual long-range, Spec. MIL-S-6216, Type E-1, dated 24 August 1950.

Q. Is there anything on that purchase request, Major Paulson, which indicates what contracts resulted from that purchase request?

A. One contract resulted, contract AF16916 with Cappel-MacDonald & Company, Dayton, Ohio.

Q. Major Paulson, I have handed you Government's Exhibit No. 7. Would you identify that instrument to the jury and tell them what it is?

A. This is purchase request 119,450, dated 14 September 1950, for 4200 each sustenance kits, individual, long-range, Type E-1, in accordance with military Spec. MIL-S-6216, dated 24 August 1950.

Q. Will you examine the exhibit and tell the jury what contracts resulted from that purchase request?

A. Contract AF 16916 with Cappel-MacDonald & Company, Dayton, Ohio.

Q. Major Paulson, I have handed you Plaintiff's Exhibit No. 11. Can you tell the jury what that exhibit is?

A. This is a purchase order between the United States Air Force and the S. Buchsbaum & Company, of 1737 South Michigan Avenue, Chicago, Illinois, numbered Contract AF33(038) 26641, dated 31 May 1951. The dollar value of this contract is $425,800.

Q. Major Paulson, is there anything on that instrument which indicates which purchase request that contract resulted from?

A. Yes, there is. This resulted from purchase request 133,766-C.

The Court: That is Exhibit 4 in this case.

A. (Continued) I might further identify this document by saying that it is for 6000 kit, emergency sustenance, Aircraft Basic Type D-1.

Q. Major Paulson, I have handed you Government's Exhibit No. 10. Will you tell the jury what that contract is?

A. This is a contract between the Department of the Air Force and Cappel-MacDonald & Company, numbered AF33(038) 16916. The dollar value of this contract is $3,184,918. It is dated 30 October 1950. It results from purchase requests 119,432 and 119,450.

Q. Major Paulson, will you examine that contract and state whether there is any provision under the terms of that agreement as to the type of material that is to be furnished under it?

A. The type of material is specified in Item 1, in clause 32. It is for 14,200 sustenance kits, individual, long-range, Type E-1, in accordance with specification MIL-S-6216, dated 24 August 1950, "as amended by paragraph B below, provided that Exhibit MCREXD5-45 dated 30 August 1950, attached hereto and hereby made a part hereof, shall be used in conjunction with AN Drawing AN229 as additional requirements to said Specification MIL-S-6216."

Q. Major Paulson, is there anything in that contract that has to do with the furnishing of war surplus material?

A. Yes. Subparagraph H, of Clause 32 says as follows—reads as follows: "It is hereby understood and agreed that no war surplus material and/or parts will be used in the manufacture of any equipment called for herein except as may be authorized in writing by the Contracting Officer."

Q. May I see the paragraph you have just read from?

A. (Witness points to paragraph.)

Q. Major Paulson, I will hand you Plaintiff's Exhibit No. 12 and ask you to tell the jury what that is.

A. This is a contract between the Air Force and Cappel-

MacDonald & Company, numbered AF 26634 which resulted from purchase request PR 133,709-C.

Mr. Kelley: Just a moment. The witness is now relating this contract to a purchase order that is not in evidence. That was one of the two—

Mr. Aug: The contract is in evidence.

The Court: The contract is in evidence but this purchase order is not in evidence. Isn't that correct?

Mr. Aug: That is correct, your Honor.

Mr. Kelley: I am objecting to his mentioning the purchase order in connection with this contract when the purchase order is not in evidence.

The Court: Well, as far as you have gone it is all right. I don't think you ought to go into these two purchase orders until you get them in evidence.

Mr. Aug: Very well, your Honor.

The Court: I will sustain the objection to that.

Q. Is there anything in that contract, Major Paulson, about the furnishing of war surplus material?

A. Yes. In part 1, subparagraph E: "It is hereby understood and agreed that no war surplus material and/or parts will be used in the manufacture of any equipment called for herein except as may be authorized in writing by the Contracting Officer."

Q. I will hand you Government's Exhibit No. 13, Major Paulson. Will you tell the jury what that is?

A. This is a contract between the Air Force and Cappel-MacDonald & Company, numbered AF 29989.

Q. Is there anything in that contract, Major Paulson, which has to do with the furnishing of war surplus material?

A. Yes. Part 1, paragraph G: "It is hereby understood and agreed that the articles and supplies called for herein shall not be manufactured from war surplus material

and/or parts, except as may be authorized in writing by the Contracting Officer."

Q. I will hand you Plaintiff's Exhibit No. 9, Major Paulson, and ask you to tell the jury what that is.

A. This is a contract between the Air Force and S. Buchsbaum & Company, numbered AF 18136, for 2500 each kit emergency sustenance, Aircraft Basic Type D-1, in accordance with MIL-Spec. MIL-S-5775-A, dated 20 August 1950.

Q. Is there anything in that contract, Major Paulson, with respect to the furnishing of war surplus material?

A. Note 1 under Item 1 reads as follows: "In the event that the end products or component parts thereof to be furnished under this bid have been previously Government-owned, or have been retained on contract termination inventory or have been acquired by the bidder at any sale of Government surplus property and no value has been added to such property by modification, overhaul or improvement such fact will be stated by the offering bidder."

Note 2, under Item 1: "Any bidder offering such products as indicated above shall furnish a certification, attached to the bid, to the effect that the products being offered are strictly in accordance with the latest revision to any specifications or drawings referenced herein, and further, that all inspection requirements called out in any referenced specification can be met by the bidder."

Q. This is Government's Exhibit No. 8, Major Paulson. Would you tell the jury what that instrument is?

A. This is a contract between the Department of the Air Force and S. Buchsbaum & Company, numbered AF 17438.

Q. Is there anything in that contract, Major Paulson, having to do with the furnishing of war surplus material?

A. There doesn't appear to be.

Mr. Aug: Your Honor, counsel for both Government and defense would like a five-minute break, if it meets with the approval of the Court.

The Court: Yes. Take a little recess, Members of the Jury.

Thereupon a short recess was had.

Q. Major Paulson, on contract 16916 you have testified that the contract provides for the Type E-1 kit. Are you familiar with the specifications for that kit?

A. Yes. I read the specifications.

Q. Do you recall what number the specifications were?

A. No, I don't recall the number.

Q. The contract provides specification MIL-S-6216. Are you familiar with the provisions of that specification?

A. Yes, I believe I am.

Mr. Aug: Mark this 17 for identification. This is Specification MIL-S-6216.

The Court: All right.

Thereupon said specification MIL-S-6216 was marked for identification as Plaintiff's Exhibit No. 17.

Q. I will hand you Plaintiff's Exhibit Number 17, marked for identification, and ask you to identify that instrument.

A. That is a military specification numbered MIL-S-6216, dated 24 August 1950.

Q. I will hand you Plaintiff's Exhibit No. 10 and ask you to read what specifications that contract calls for.

A. Sustenance kits, individual, long-range, Type E-1, in accordance with military spec. MIL-S-6216, dated 24 August 1950.

Q. I will ask you if you can identify the exhibit numbered 17 as the specification called for in the contract?

A. Yes, that is the specification called for.

Mr. Aug: We would like to offer the specification into evidence, if the Court please.

Mr. Kelley: I wish to state my objection for the record. Since the contract that the witness says is identified with this specification was received in evidence without grant-

ing to the defendants the right to inquire on the voir dire and without adequate identification, I add to this offer of Government's Exhibit 17 our objection that it has not been properly identified through the foundation of the contract itself.

The Court: Very well. Overruled.

Thereupon said specification MIL-S-6216 was admitted in evidence and marked as Plaintiff's Exhibit No. 17.

Q. Major Paulson, looking at Government's Exhibit No. 17, I call your attention to the pro. ision contained therein with respect to goggles. Will you read from that exhibit to the jury and tell the jury what is called for by that specification with respect to goggles?

A. Paragraph 3.2 of this specification MIL-S-6216 sets forth a list of the components in this kit. A component in Table 1, component No. 20 is "Goggle, Ski-Mountain, Type 1" in accordance with Spec. JAN-G-1134, one each goggle should be in the kit.

Mr. Aug: Mark this for identification as Exhibit 18.

Thereupon said specification was marked for identification as Plaintiff's Exhibit No. 18.

Q. I hand you this instrument marked Plaintiff's Exhibit 18 for identification. Major Paulson, will you tell the jury what that instrument is?

A. That is specification JAN-G-1134, dated 24 June 1949. It is National Military Establishment Specification for goggles, Ski-Mountain.

Q. Did you examine that? Is this, Major Paulson, the specification referred to in specification MIL-S-6216?

A. Yes, sir, it appears to be.

Mr. Aug: We would like to offer Plaintiff's Exhibit No. 18 into evidence, if the Court please.

The Court: What contract does that refer to?

Mr. Aug: Your Honor, the contract is 16916. The contract calls for specification 6216. Specification 6216 as far

as goggles are concerned calls for Type 1 of JAN-G-1134, specification. This is JAN-G-1134.

Mr. Kelley: We interpose the same objection as was made in connection with Exhibit 17.

Mr. Aug: Is it in evidence, your Honor?

The Court: Same objection?

Mr. Kelley: Same objection as we interposed in connection with Exhibit 17.

The Court: Yes, it is admitted in evidence, but over the objection, of course.

Thereupon specification JAN-G-1134 was admitted in evidence and marked as Plaintiff's Exhibit No. 18.

Q. Major Paulson, I will ask you to examine Government's Exhibit No. 18 and see what there is in there with respect to the specifications as to Type 1 goggle requirements of Type-1 goggle.

A. In this specification in paragraph B, Type and Size, paragraph B-1a specifies a Type-1 goggle as having a "laminated glass lens, as hereinafter specified."

Q. Are there other provisions in there, Major Paulson, as to the Type-1 goggle?

A. Yes. There is a detailed description of the type of lens to be furnished.

Q. Major Paulson, I will call your attention to page 4, paragraph E-1g(6) of this specification Government's Exhibit No. 18 and ask you to read that provision.

A. May I have that again?

(Thereupon the last question was read by the reporter.)

A. This paragraph reads: "The Type 1 lens shall be colored, laminated, non-shatterable, flat, ground and polished glass. Shall be of shape and size as illustrated in Figure 4 and shall fit tightly and evenly into frame herein specified."

Q. Now, Major Paulson, you are familiar with the contracts involving the D-1 kit. I hand you Plaintiff's Exhibit No. 8 which you have identified as contract 17438. What are the specifications called for in that contract?

A. This contract makes reference to kits emergency sustenance, Aircraft Basic Type D-1, in accordance with specification MIL-S-5775A, dated 28 August 1950.

Q. Now I will hand you Plaintiff's Exhibit No. 11 which you have identified as contract No. 26641 and ask you what specifications are called for in that contract?

A. Kit emergency sustenance, Aircraft Basic Type D-1, in accordance with military specification MIL-S-5775-A, dated 28 August 1950.

Q. I will hand you Plaintiff's Exhibit No. 9 which has been identified as contract 18136, identified and in evidence as that contract. What are the specifications called for in that contract?

A. This contract calls for kits emergency sustenance, Aircraft Basic Type D-1, in accordance with military specification MIL-S-5775-A, dated 28 August 1950.

Q. Now those three contracts provide for D-1 kits; is that correct, Major Paulson?

A. That is correct.

Q. And they all refer to the same specifications; is that correct?

A. Yes, sir.

Q. Are you familiar with the specification MIL-S-5775-A?

A. Yes, sir.

Mr. Aug: Identify this as 19.

Thereupon said document was marked for identification as Plaintiff's Exhibit No. 19.

Mr. Aug: Your Honor, a point has been raised as to a paper that is attached to this particular exhibit. I think it would provide a fair breaking point while we consider off the record the objection made by the other counsel.

The Court: Now you have Government's Exhibit 19.

Mr. Aug: Just marked for identification, yes, your Honor. They have raised a point about the amendment that is attached to this specification, which I would like to have an opportunity to think over and it looks like a good time to break off, your Honor, if you are so inclined.

The Court: I have no objection. Do you want the Major back tomorrow?

Mr. Aug: Oh, yes, yes.

The Court: I just want to take this opportunity to issue an order to a Major. I don't have that chance very often. So, you return tomorrow morning by 11 o'clock.

Now, Members of the Jury, we are about to recess the further hearing of this cause until tomorrow morning at 11 o'clock. During this interval you will bear in mind my usual admonition. Return here, if you please, at 11 o'clock tomorrow morning.

Adjourn court until 11 o'clock tomorrow morning.

Thereupon the further proceedings in the trial of this cause were adjourned until tomorrow morning at 11 o'clock.

Morning Session.

Wednesday, May 14, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted the trial of this cause proceeded as follows:

The Court: Counsel may proceed.

MAJOR ROBERT M. PAULSON resumed the witness stand and testified further, as follows:

By Mr. Aug:

Q. Major Paulson, I will hand you Government's Exhibit No. 8, which you have identified as being contract 17438.

Would you state what specification is called for in that contract?

A. This contract calls for Type D-1 sustenance kits, in accordance with specification MIL-S-5775A, dated 28 August 1950.

Q. I now hand you Government's Exhibit No. 9 which has been identified as contract No. 18136 and ask you what specification is called for in that contract?

A. D-1 kits in accordance with military specification MIL-S-5775A, dated 28 August 1950.

Q. I now hand you Government's Exhibit No. 10 which is contract 16916 and ask you what specification is called for by that contract?

A. These are Type E-1 kits in accordance with military specification MIL-S-62166, dated 24 August 1950.

Q. I will hand you Government's Exhibit No. 11, Major Paulson, and ask you what kit and what specification are called for in that contract?

A. That is sustenance kit Type D-1, in accordance with Spec. MIL-S-5775A, dated 28 August 1950.

Q. Those three contracts calling for the D-1 kits were all under your supervision; isn't that correct?

A. Yes, sir.

Q. And you are familiar with the specification MIL-S-5775A?

A. Yes, sir.

Mr. Aug: Your Honor, this has been marked for identification as Exhibit 19, that is specification 5775A.

Q. I will hand you the instrument marked Plaintiff's Exhibit for identification No. 19 and ask you to identify that, Major Paulson.

A. That is military specification for sustenance kit, emergency, Aircraft, Type D-1, numbered MIL-S-5775A, dated 28 August 1950.

Q. Do you recognize that as being the specification called for in the contracts calling for the D-1 type kit.

A. Yes, sir.

Mr. Aug: I would like to offer this specification in evidence, your Honor, as Plaintiff's Exhibit No. 19.

Mr. Kelley: If the Court please, the defendant Opper enters his objection to the introduction of Exhibit 19 upon the same grounds that were stated as respecting Exhibits 17 and 18.

The Court: That is all right, for the same reasons.

Mr. Svoboda: The defendant Hollifield objects.

The Court: Overruled. The document marked as Exhibit 19 for identification is now admitted in evidence.

Thereupon said specification MIL-S-5775A was admitted in evidence, marked as Plaintiff's Exhibit No. 19.

Q. Handing you Government's Exhibit No. 19, Major Paulson, I will ask you to examine it and state whether there is anything in there with respect to goggles?

A. In paragraph 3.3 which lists the components of the kit, Item No. 11 calls out goggles, sun, Type 1, in accordance with specification MIL-G-4085, 3 pairs per kit.

Q. Are you familiar with that specification MIL-G-4085, Major Paulson?

A. Yes, sir.

The Court: I would like to make an observation in the record for the benefit of counsel, because I think it is an important fact. I would like to have the record show that the court has not, at any time, prevented counsel for defendants or either of them from cross-examining any of these witnesses with respect to the various documents that have heretofore been admitted in evidence, which consists of all the exhibits; excepting I think Exhibit 2 and Exhibit 3, possibly Exhibits 1, 2, 3, 14 and 16 there has been no objection upon the part—no refusal upon the part of the Court to counsel for the defendant examining any of the witnesses that have called or are to be called, with regard to any of these documents, with the right to

renew their objections after such a cross-examination, if counsel wish to have such.

What I have held is that we cannot stop the progress of this case, at least, that has been my view, to have a voir dire examination of the witness as to each and every document that is individually tendered into evidence.

Counsel may have their objection to it, of course, and cross-examine about it. After you have done so, if you feel you have brought out anything in your cross-examination that verifies your objection you certainly have the right to renew it.

I just want the record to show that because of these later objections which are based upon an earlier ruling and I don't want any question made about that earlier ruling in the record.

Mr. Kelley: For the record, if your Honor please, may I on behalf of the defendant Opper state our position?

The Court: Yes, sir, you may.

Mr. Kelley: I realize full well that we should be and probably will be accorded a proper scope and opportunity for cross-examination. Now, as to the witness who was first called to the stand in this case, Mr. Kistner, of course, as yet there has been no opportunity for cross-examination, because he was withdrawn from the stand by the government. As to Mr. Kistner, because he was withdrawn, I had had no opportunity to complete a voir dire examination that I had commenced.

Now, as to the witness who followed Mr. Kistner, Special Agent John DeNeale, it was at the time that he was on the stand in his direct examination, that the government identified and offered in evidence a series of four purchase requests and a series of contracts, the exhibit numbers being Government's 8 through Government's 13. At that time, when they were offered, I on behalf of the defendant Opper requested permission to examine the witness on his voir dire to determine on the voir dire facts that would affect the admissibility of these documents. My

request was categorically denied. The Court announced, incidentally, that the exhibits were to be admitted in evidence. Once so admitted then all the cross-examination in the world would not cure what I feel to have been deprivation of our rights and I thus must take the position that the four purchase requests now admitted in evidence, the contracts just mentioned by exhibit number, were all improperly admitted and that therefore any specifications which must be admitted by virtue of their connection with these documents are likewise objectionable.

The Court: I understand. Of course, I would like the record to show, which is a fact, that all of these records were produced by the parties in charge of them, who were brought in here from the United States Military Base, whatever you call it out here at Wright Field, and that they are all documents that are referred to in the indictment. I think that clears up the record so we all understand.

The record will show whether I am right about this or not. I am not going to dispute the record. It is true that Mr. Kistner was excused. However, that was for him to find out or verify about these documents, Government's Exhibits 2 and 3, which are named in the indictment with the same numbers exactly that appear on the exhibits, except the letter C was added on the exhibits and he was to find out or testify back here at some time with regard to those two documents.

Now I think the record will show, we won't take the time now because it will speak for itself, that opportunity was given to counsel to cross-examine Mr. Kistner about all these documents that were offered in evidence. I am quite sure there was no desire to cut counsel off. I don't know whether any questions were asked him or not.

Mr. Kelley: If your Honor please, the record couldn't show that defendant Opper was offered an opportunity to cross-examine the witness Kistner, because the direct examination—I was offered the right to commence a voir dire

examination of the witness Kistner, which I was not able to complete. In the meantime all the exhibits, save the two, 2 and 3, have been admitted in evidence prior to any return to the stand of Mr. Kistner.

Mr. Richter: Mr. Kistner will be called very shortly.

The Court: All right. I think we have it all straight in the record. The record will speak, of course, for itself and I won't change it.

Mr. Aug: Would you mark that for identification?

The Court: Anyway I want it to be plain, in the view of the Court, I do not want any question made that defendants' counsel were not given full opportunity to cross-examine, because that is a right that they have in this and every other case. It is a very important right and this Court, of course, will not deprive them of that. Be that as it may, you may go forward.

Mr. Aug: Mark it 20.

The Court: What is the date of it?

Mr. Aug: 21 March 1950.

Thereupon a document was marked for identification as Plaintiff's Exhibit No. 20.

Q. I will hand you a document marked for identification as Plaintiff's Exhibit No. 20 and ask you to identify it, Major Paulson.

A. This is military specification MIL-G-4085, dated 21 March 1950, for goggles, folding.

Q. I will ask you to examine again the Exhibit 19 and state whether the Exhibit 20 is the specification referred to in Exhibit No. 19.

A. Yes, sir, it appears to be.

Mr. Aug: We will offer the Government's Exhibit No. 20 in evidence, if the Court please.

Mr. Kelley: The defendant Opper objects to the introduction of Exhibit 20 on the same grounds stated with respect to Exhibits 17, 18 and 19.

The Court: Yes, sir. Very well. It may be admitted.

Thereupon specification MIL-G-4085 was admitted in evidence and marked Plaintiff's Exhibit No. 20.

Mr. Svoboda: If the Court please, I am going to ask at this time, instead of jumping up each time, as to the defendant Hollifield objecting to the same as defendant Opper, I would like to renew again that any objection made would be the same as for the defendant Hollifield.

The Court: Yes. I am sure that is understood, but if not, that is the understanding of the Court and I think of the government that the objection of counsel for either one of these defendants inures to the benefit of the other.

Mr. Svoboda: Thank you.

Mr. Aug: May we speak to the Court?

(Out of the hearing of the jury):

Mr. Aug: It is the government's intention at this time to discontinue the questioning of Major Paulson and proceed with the attempt to clarify the two PRs offered for evidence but which have as yet not been introduced into evidence.

The Court: That is Government's Exhibits 2 and 3.

Mr. Aug: Government's Exhibits 2 and 3. In the event that those exhibits are introduced into evidence, the government would like to reserve the right to recall Major Paulson and interrogate him as to those exhibits and the contracts resulting from them. It is agreed between counsel that the cross-examination of Major Paulson will be withheld until a determination of those conditions.

Mr. Kelley: It is agreed.

The Court: Is that satisfactory?

Mr. Kelley: It is agreed by the defendant Opper.

Mr. Svoboda: And Hollifield.

The Court: Counsel agree to that.

Mr. Kelley: Yes, sir.

Mr. Aug: Then they can have one cross-examination.

(In the hearing of the jury):

Mr. Aug: We are through with the witness at this time. Major Paulson, you may be excused.

And thereupon

JOHN W. WHITE, being duly sworn, testified as follows:

Direct Examination, by Mr. Richter.

Q. Will you state your name, please?
A. John W. White.
Q. Where do you live?
A. Clifton, Ohio.
Q. What is your occupation?
A. Employee at Wright Field.
Q. In what capacity?
A. Administrative executive.
Q. Now, in that capacity, do you have charge of records and of forms?
A. Yes, sir.
Q. I will hand you Government's Exhibits 2 and 3 and direct your attention—

Mr. Kelley: May I interrupt? Will counsel please recite they are for identification?

Q. (Continued) —marked for identification Government's Exhibits 2 and 3, and direct your attention to the numbers in the upper righthand corners and ask you to

explain to the jury and the Court the significance of the letter C which appears after those numbers?

Mr. Kelley: I object, if the Court please. There is no proper foundation laid for this question. He hasn't determined from the witness if he could explain it and why he could explain it.

Q. Can you explain it?
A. Yes, sir.

The Court: Do these matters come up under your official province?

The Witness: Yes, sir.

Mr. Aug: I thought we had brought that out by explaining his duties as being in charge of records and forms.

Mr. Kelley: If the Court please, I again request, certainly I do not wish to unnecessarily take the time of this Court and jury,—may I request a brief voir dire at this point?

The Court: Yes, you may.

By Mr. Kelley:

Q. Witness, have you ever before being brought in connection with this case in any way seen any of those documents?

A. No. My assistant signed them, however, when they came in.

Q. My question was, have you ever seen either of them before?

A. Not to my knowledge.

Q. You have no personal knowledge as respects the contents of either of those documents?

A. Yes, I have.

Q. You have a personal knowledge as to their contents?

A. I have a personal knowledge of the contents of all documents of this kind. They pass under my control, not visibly under my eyes, but my assistant's.

Q. Do you mean to say you have a knowledge of their contents or a knowledge of the nature of their contents?

A. Well, I had a fair knowledge of the program, of everything we buy, since it passes through my office.

Q. Since you have never before seen either of these documents, what basis permits you to explain something that is on them?

A. The question of the letter C was placed on all PRs on my instructions.

Q. Are you sure that that is true?

A. Yes, sir.

Mr. Kelley: May I see the other PRs please?

Q. Witness, I show you what has been marked in evidence Government's Exhibit 5. Do you see—First, what is that? Is that a PR?

A. That is a PR.

Q. Is there a letter C on it?

The Court: By "PR" you mean—

The Witness: Purchase request.

Q. Is there a letter C on it?

A. No.

Q. How do you reconcile that fact, if you instructed the letter C to be placed on all purchase requests?

A. The purchase request form we order through the Adjutant General at AMC, that is, the production of this blank form, such as I hold in my hand. They make them in pads of 25 units, of an original and three copies. About a year and a half ago or maybe a little longer, the Adjutant General's office reproduced 15,000 PRs, originals and copies. In some manner a slip up was made and they printed 15,000 duplicates from 120,000 to 135,000. Now, they were already printed and in the hands of Supply and Maintenance Division. My office received all PRs from all divisions for scrutiny and coordination, with budget and other necessary check points before delivering them to

the buyer. My people reported to me that they were getting duplicate numbers. So, I called the Adjutant General's office and ascertained the fact that they made the mistake and also ascertained the fact that the PRs were in the hands of Supply and Maintenance Division in Area A. So I contacted the chief of that division and I worked out with his control office the idea that we would not destroy these things, because they were already printed. And since during the war we used an A and a B, we decided to use a C. So, on all the series between 120,000 and 135,000 used by Supply and Maintenance Division they were to attach the letter C to the number. The Procurement Division, Engineering Division, Intelligence and other divisions used whatever pads they had, without affixing a C. Therefore, we did not have a duplication beyond probably 25 of the originals that came in while my office was catching the duplication.

Q. But there were at least 25 duplications; is that right?

A. They were sent back for change.

Q. Could you answer that question?

A. Yes, there were.

Q. That is all I asked. Am I correct in understanding when they complained to you of a duplication they would discover a situation such as this, that a purchase request had been issued and filled out as respects an item, let's say A—

A. That is right.

Q. And a different item, let's say B, was filled out on another purchase request, each request bearing the selfsame number?

A. That is right.

Q. And to your knowledge, at least 25 instances of that character?

A. 20 to 25.

Q. 20 to 25. Do you know precisely how many?

A. No, I don't. I wouldn't know that.

Q. You couldn't know that, could you?

A. No.

Q. And thus to avoid a repetition of that error, after errors had existed, you directed after that thenceforth they place a C?

A. And I also directed that we go back and retrieve duplications.

Q. Didn't you state a moment ago that it would have been impossible for you to determine all duplications?

A. I didn't say that.

The Court: What did you say?

The Witness: We kept a pencil record by number of who gets a PR.

Q. Did you personally go back in this instance to determine whether or not, as respects Government's Exhibit for identification 2 that there was in fact a duplication?

A. I don't think there was a duplication of this one.

Q. Why do you say that?

A. Because it came in with this C on it.

Q. How do you know that?

A. My girl signed it, my chief girl signed it and she wouldn't have signed it.

Q. Do you realize you are testifying under oath?

Mr. Richter: The witness should be given the chance to answer the question.

The Court: Answer the question.

A. This thing is dated to January 1951. This occurrence of the error was detected in, I believe, some time in July or August 1950.

Q. You don't know that of your own knowledge, do you?

A. I know that, yes.

Q. Of your own knowledge, when this error was detected as to the documents before you?

A. The documents before me are long after the error was detected.

Q. A moment ago you told me with respect to the document you have before you, which is Government's Exhibit 2 for identification, you told this Court and this jury that

the C that appears thereon was on it when it came to your office. Is that right? Did you state that?

A. I stated that because I predicate my statement on the fact that a member of my staff accepted it and signed it and they were instructed not to unless it had the C on it.

Q. Then you are indulging in a supposition, are you not?

A. Well,—

Q. Are you or aren't you, sir?

A. Well, yes, technically, I suppose so.

Q. And do we understand that you undertake now to suggest that on Government's Exhibits 2 and 3 for identification that duplications were found to exist as to those numbers?

A. On these numbers.

Q. That someone went back and avoided a duplication by inserting a C on two duplicates, therefore, we have no duplication here; is that correct?

A. This duplication here, sir, may I call your attention to this fact that I signed this one?

Q. What is the number of that exhibit?

A. This is 119,443.

Q. What is the exhibit number? You don't need to look for it.

The Court: It is No. 5.

The Witness: 5.

Q. You signed this?

A. I signed that one myself, because it came out of procurement on the 27th of August 1950.

Q. So, you have particular knowledge as to No. 5?

A. That is right and there was apparently no duplication at that time.

Q. Why do you say "apparently"?

A. Because this one was not.

Q. You are talking about—

A. Exhibit No. 2 was dated January 1951, six months later, or five months later.

Q. You say you have personal knowledge with respect to 5?

A. That is right.

Q. You do not have personal knowledge with respect to 2 and 3, but must rely on supposition; is that right?

A. Well, supposition or shall we say operation.

Q. What do you say?

A. Well, I will say that my people have been found to be 99 per cent correct in their work.

Q. So they can be incorrect one per cent of the time; is that right?

A. Possibly so. This incidentally, your Exhibit No. 3 was dated 3 December 1950.

Mr. Kelley: Defendant Opper objects to the introduction of the document tendered on the ground that the witness has not been proved qualified to identify it and that the instrument stands at this moment unidentified and unconnected with the indictment in this case.

The Court: Are these under your supervision?

The Witness: Yes, sir.

The Court: At Wright Field?

The Witness: Yes, sir.

The Court: Objection overruled. Government's Exhibits 2 and 3 for identification are now admitted in evidence and may be treated as evidence in the case.

Thereupon said documents were admitted in evidence and marked as Plaintiff's Exhibits Nos. 2 and 3 respectively.

Mr. Richter: Mr. White, you may be excused.

The Court: Pardon me. Are you through with the witness?

Mr. Aug: One moment, your Honor.

Mr. Richter: If the Court please, we would like it stipulated that all of the testimony given by this witness on the voir dire is the same testimony that would have been produced by the government on direct examination of the witness for the purpose of introducing the documents.

Mr. Kelley: If the Court please, I don't know what that statement was. He says he would like to stipulate it. Is he testifying?

The Court: I will not agree to the stipulation. You go ahead and ask him all these questions over again. Go ahead.

By Mr. Richter:

Q. Do you know, Mr. White, in what unit or division Government's Exhibits 2 and 3 originated?

A. Supply Division.

Q. Now how did you first undertake—under what circumstances did you undertake to direct that the letter C should be added to the numbers which were duplicates on the forms?

A. I established the fact first that the duplicates had been made and distributed through the Adjutant General's office. Then I contacted the initiating agencies who it had been reported to me had the blank forms. With that division or divisions, I then arranged with them that they would add C to the number before releasing their purchase requests, after they had been initiated.

Q. Will you state whether or not you issued instructions—

A. I did, sir.

Q. —to Supply Division?

A. I did, sir.

Q. And other departments to that effect?

A. I did, sir. Then I instructed my own people to reject PRs coming from those divisions in that number range that did not have C after the numbers.

Q. Now, Mr. White, what was the range of numbers

that were involved in these duplications? Will you repeat that please?

A. 120,000 to 135,000, inclusive.

Q. Now, this is Government's Exhibit No. 5, which counsel for the defendant Opper questioned you about. What is that number?

A. That number is 119,443.

Q. Will you state whether or not that is within the range of the numbers which were duplicated?

A. It is within the range. No, it isn't.

Q. I will hand you Government's Exhibits 2 and 3 and ask you whether or not they are within the range of the numbers which were duplicated?

A. They are.

Mr. Richter: Now, if the Court please, we offer these in evidence.

The Court: Very well. They have been objected to. The objection still stands.

Mr. Kelley: We object to them, of course, on the other grounds stated as to all purchase requests, all grounds of objection which we have directed toward any of the six purchase requests we wish to bear upon this particular objection.

The Court: That is all right. Overrule the objection on Exhibits 2 and 3 being admitted into evidence.

Thereupon said documents were admitted in evidence and marked as Plaintiff's Exhibits Nos. 2 and 3, respectively.

Mr. Aug: We are through with Mr. White.

The Court: No, don't go away. Stay here, please. (After the Court and counsel confer at the bench out of the hearing of the jury:) Now is there anything further the government wishes to inquire of the witness, Mr. White?

Mr. Richter: No.

The Court: Now, does counsel wish to cross-examine Mr. White?

Mr. Kelley: None as to the defendant Opper.

Mr. Svoboda: None as to defendant Hollifield.

The Court: No cross-examination.

Mr. Kelley: No, sir.

Mr. Svoboda: No, sir.

The Court: Now you can go, Mr. White.

Mr. Richter: If the Court please, the government is through with the witness Kistner. However, if counsel for defendants desire to cross-examine him, they may have that opportunity.

The Court: That is right. Call Mr. Kistner.

And thereupon

JEROME KISTNER resumed the witness stand and testified further as follows:

The Court: Does the government wish to ask anything further of Mr. Kistner?

Mr. Richter: The government has no further questions of Mr. Kistner. Counsel may proceed to cross-examine him.

Mr. Kelley: It was my understanding, if the Court please, that this witness was recalled solely with respect to Government Exhibits 2 and 3. That was so stated, I believe in the record. Since those exhibits as well as all other contracts and purchase requests have been received in evidence prior to his recall and tender for cross-examination, we will not cross-examine.

The Court: Do you wish to cross-examine him? I want the record to show that the Court now says counsel for

the defendants, Mr. Kistner is here, they may cross-examine him as fully as they wish, not only about Exhibits 2 and 3 but 4, 5, 6, 7 and 8 to 13, inclusive, if they wish to cross-examine him about these exhibits, or any of these other exhibits down to 19 or 20, inclusive, although, I think 20 is still marked for identification.

Mr. Kelley: No.

The Court: Is it admitted? If counsel develops anything in their cross-examination which justifies the Court in reversing his ruling heretofore made, I shall certainly reverse it, but I am not going to reverse it unless counsel develop something that supplies some basis for it. Now you may proceed with cross-examination, Gentlemen, or not, as you see fi

Mr. Kelley: We will stand on the record as made with no further cross-examination, your Honor.

The Court: That is quite satisfactory.

Mr. Kelley: You may be excused.

The Court: That is all, then, Mr. Kistner. Call the next witness.

And thereupon

MAJOR ROBERT M. PAULSON resumed the witness stand and testified further on **Direct Examination**, as follows:

By Mr. Aug:

Q. Major Paulson, I will hand you Government's Exhibit No. 2 and ask you—which is purchase request 127,196-C and ask you basically what that purchase request calls for?

A. This purchase request calls for 13,000 each kit, emergency, sustenance, cold climate, seat style, Type B-1, in accordance with spec. MIL-S-6226A, dated 24 January 1951 and Exhibit MCREXD5-45, dated 30 August 1950 and Exhibit MCREXD5-43, dated 28 August 1950.

Q. Will you examine that exhibit and tell the jury whether that purchase request resulted in any contract or contracts?

A. This purchase request resulted in four contracts, Contract AF 26635 with Dough Boy Industries, Inc., New Richmond, Wisconsin; Contract 26634 with Cappel-MacDonald Company, Dayton, Ohio; Contract 26853 with Manufacturers Research and Development Corporation, Washington, D. C., and Contract AF 29060 with Sav-Way Sera Seal, Incorporated, Detroit, Michigan.

Q. Major, I will hand you Government's Exhibit No. 3, which is purchase request No. 133709-C and ask you to state basically what that purchase request calls for?

A. 10,000 each kits, emergency, sustenance, temperate climate, seat style, Type C-1, in accordance with Spec. MIL-S-6227A, dated 24 January 1951.

Q. Major Paulson, will you examine that exhibit and state whether or not that purchase request resulted in any contracts?

A. Resulted in two contracts, Contract AF 26634 with Cappel-MacDonald & Company, Dayton, Ohio and Contract AF 26854 with General American Transportation Corporation, Chicago, Illinois.

Q. Now, Major Paulson, I will hand you Government's Exhibit No. 12, which is contract 26634 and ask you what that contract calls for.

A. This contract calls for two items, Item 1, 2000 emergency, sustenance kit, cold climate, seat style, Type B-1, in accordance with military specification MIL-S-6226A, dated 24 January 1951.

Q. I will ask you to examine that exhibit and see if there is anything on there which indicates which purchase request that contract resulted from?

A. There is one other item on here.

Q. Very well.

A. Item 2, 10,000 kits, emergency, sustenance, temperate climate, seat style, type C-1, in accordance with Spec. MIL-S-6227A, dated 24 January 1951.

Q. Would you answer the next question put to you, which was to the effect, is there anything on that contract which indicates which purchase request that contract resulted from?

A. Yes. This contract resulted from purchase request 133,709-C.

Q. Is that one of the purchase requests which you have in your hand?

A. Yes, it is.

Q. Will you tell us what the exhibit number of that document is?

A. Exhibit No. 3.

Mr. Aug: We are through with this witness, if the Court please.

Cross-Examination, by Mr. Kelley.

Q. I only have one or two questions, Major. Would you restate for me your title or the description of your position at the Field?

A. At the present time?

Q. At the present time.

A. I am Chief of the Aerial Reconnaissance Unit, Armament Section, Electronics Branch, Procurement Division.

Q. The largest element that you have mentioned is the Procurement Division, is that right?

A. That is right.

Q. The others are branches down from that division. When did you undertake those duties and functions?

A. Approximately the 1st of March of this year.

Q. Of 1952?

A. 1952.

Q. What was your duty and function and title prior to that date?

A. From approximately the 1st of July 1951 to the 17th of January 1952, I was chief of the survival equipment unit of the Materiel Branch, of the Materiel Section, Procurement Division.

Q. And located where?

A. In building 16-B, Room 214.

Q. And prior to that were you at the Field in some other capacity?

A. Yes. Prior to that time I was Chief of the Chemicals Unit of the Materiel Branch of the Materiel Section, Procurement Division.

Mr. Kelley: Just a moment, please. (After conferring with co-counsel) Your Honor, we make no request to recall this witness for further cross-examination, but may it be understood that he will not leave the jurisdiction of this Court while this trial continues?

The Court: Well, to the extent that the Court is able to control that.

Mr. Kelley: It was a request only.

The Court: I suppose if he gets a request from General Eisenhower--

The Witness: I already have that order, your Honor.

The Court: Already have an order to go to Paris?

The Witness: No, to Texas.

The Court: Oh, to Texas. That is better yet. How soon do you have to go?

The Witness: The estimated departure date will be around the 1st of June of this year.

Mr. Kelley: I trust we will be through by that time.

The Court: We ought to be approximately near the end of the trial by the 1st of June.

Mr. Aug: I hope so.

The Court: We will have this arrangement: Please don't go away. If you get military orders, I don't suppose I have any right to interfere with it. I won't take any chance anyhow. But if you should go away, please notify the District Attorney's Office or counsel for defendants. I only

said District Attorney's office, because it is a little easier to get them. Let them know so there won't be any question about that. You have the right to recall him if you wish to.

Mr. Kelley: Thank you, your Honor.

The Court: You are excused, subject to coming back. I think it would be well to understand, the District Attorney's office to understand, you Gentlemen should understand, if we reach the conclusion of the case and counsel are not going to recall the Major, I think you should get some word to him too.

Mr. Aug: Your Honor, I am not clear what the purpose of the recalling would be. Are they through with the cross-examination of this witness? The purpose could be to recall this witness as their witness.

The Court: No. They can recall him for cross-examination, if they have something they would like to look into, these papers and all. I think they have the right to do that. I wouldn't prevent them the right to cross-examine him. You should let him know if he is finished.

Mr. Aug: I would think any right to cross-examine they would have, would have to be exercised before the final termination of our particular branch of the case.

The Court: I think that is right. I think counsel will agree to that. That is correct, is it not?

Mr. Kelley: Yes, your Honor, with the added thought we would still appreciate it if the witness would remain in the jurisdiction, or notify us if he receives orders during the period that the defendant is establishing its case.

The Court: The Major is subject to recall if counsel want to recall him for cross-examination. However, any cross-examination would have to be while the government is still on their side of the case. However, if it is after that, during the course of defendants' case, he would be called for direct examination.

Mr. Canny: May we have a five-minute break at this time?

The Court: Recess?

Mr. Canny: Yes, your Honor.

The Court: Yes. I guess you are excused temporarily.

The Witness: Thank you.

Thereupon a short recess was had.

And thereupon

CHESTER BUCHSBAUM, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. State your full name.

A. Chester Buchsbaum. I am president of S. Buchsbaum & Company, Chicago.

Q. Is your home in Chicago?

A. My home is in Chicago.

Q. Mr. Buchsbaum, do you know the defendant Robert Hollifield?

A. I do.

Q. Do you see him in this court room?

A. I see him over there, third man at the rear, one, two, three.

Q. Do you know the defendant William J. Opper?

A. I do.

Q. Do you see him in this court room?

A. In the back of the table there, one, two, three, four, fourth man.

Mr. Aug: Can the record state that the witness has pointed to the defendants Hollifield and Opper?

The Court: Yes.

Q. When did you first know Robert Hollifield, Mr. Buchsbaum?

A. I met Robert Hollifield during the World War, sometime during the last world war, in some division. I don't remember where, and then later I didn't see him for around five or six years and I met him at Wright Field in the Aero Med. Lab.

Q. What year would this be?

A. 1950, I think in September.

Q. And when did you first meet the defendant Opper?

A. I met Mr. Opper the early part of October, probably the first week of October.

Q. Where did you first meet him and what year?

A. 1950, I met him at my office.

Q. In Chicago?

A. In Chicago. I spoke to him on the 'phone first.

Q. Will you tell the jury the circumstances around your meeting Mr. Opper?

A. When I went to Wright Field to see Mr. Hollifield, I was working on bidding on the E-1 kit.

Q. Can you describe the E-1 kit? Can you tell us generally what you mean by the E-1 kit?

A. It is a sustenance kit and it has a raincoat in it and a carrying case; has goggles, machette, and various life-saving equipment for use—other equipment for life-saving. We manufacture a considerable amount of merchandise that would go into that kit, such as the raincoat and the outside container, and I wanted to see all the merchandise that goes into it so I could bid on the item. Mr. Hollifield showed me all the merchandise and then we went back. That was in a room across the hall from Mr. Hollifield's office and we went back into Mr. Hollifield's office and I reviewed with him the various items and asked him where certain items could be obtained. There was a compass and I asked him where I could get the compass and he says, "The compass, there is a man in Chicago has that, by the name of Opper." I said: "Well, do you know how to reach him?" He says, "I don't know anything about it except his name is Opper and he is in Chicago." So, I put the name down in my pocket along with the other various names.

Q. Was that the first mention you ever heard of Opper?

A. First time I ever heard of Opper.

Q. What time of year was this?

A. Late in September.

Q. And what year?

A. 1950.

Q. Now, what did you do after this visit to Wright Field?

A. Went back home; went over all my records and had my engineers write letters to the various people, requesting prices on the various merchandise that was required, also sent my engineers to Wright Field to work on the raincoat and other things we make to see how they were made, so we could figure on costs ourselves of those items.

Q. Did you see Opper after you returned to Chicago?

A. Not immediately. We wrote them a letter—our firm wrote them a letter. Then we called him. I had to check his 'phone number myself. I called him myself. There was a few Oppers in the book and I finally located the correct Opper. He says, "I got your letter and I will come over and I will see you" and he came over to see me.

Q. When was this?

A. That I believe was the first few days in October of 1950.

Q. Tell the jury what transpired then?

A. He came over and showed me the little compass; left me a few samples and left me a few samples of some other little compass he made, a very small compass. I had the bids laying on my desk. I said: "I have to get some other items. There are some other items I need now" and I went over the list and the list had on it this particular item was a ski goggle and had the spec. number which I forget at this moment and type 1, I think it was. He says, "I think I know where to get some of those." I says, "I am having a hard time getting a price." We were having a very difficult time; no one wanted to make them. The order required 14,200 of them. I think 14,200. It was very hard to get a price. The American Optical did not want

to make them at this time. We later did get a price of, I think $8.50 or thereabouts. He says, "I think I can get some of those for you." I says, "Get them in. Let's see what they look like." Also I was working on a D-1 kit. The D-1 kit is a smaller sustenance kit, which contained in addition to various products a sun glass, a plastic sun glass, or anti-glare glass and he said: "I think I can get some of those too." I says, "Get me the samples and we will see what can be done" and he left my office and a few days later—I am trying to correlate the date by the time I put the bid in. I would say about October 11, about that time, 11th or 12th.

Q. You submitted a bid to the government at that time?

A. No. I submitted the E-1 kit I think on the 13th and it was the day before the 11th he came in and brought me the glasses, the ski glasses and the anti-glare glasses, the plastic glasses with leather binding.

Q. Then you say you later submitted a bid on the E-1 kit?

A. I submitted the E-1, I think, on the 13th of June.

Q. Now, in the E-1 kit was a goggle part of that kit?

A. The ski goggle was a part of the kit.

Q. Excuse me. Do you say you submitted your bid on the 13th? What month was that?

A. October 1950.

Q. On the E-1 kit?

A. On the E-1 kit.

Q. When did you submit the bid on the E-1 kit?

The Court: You can look at your record.

A. I don't think I have that in my case. It was either the 9th or 13th. I think it was the 13th, Friday. October 13th was Friday. That was the date I submitted the bid. It was supposed to be in on the 9th. It was extended to the 13th.

Q. It was in October?

A. October 1950.

Q. In that E-1 kit was a goggle to be furnished in that E-1 kit?

A. The ski goggle was to be furnished in that kit.

Q. When you submitted your bid on the E-1 kit, did you list Opper as the supplier of that goggle?

A. When I submitted my bid I originally made up the bid with the American Optical price of $8.50 or thereabouts.

Q. Their bid was in on the—

A. No. Then I put an alternate in that I subsequently had written up on the day that the Air Force told me that the war surplus goggle would be satisfactory. I put a little rider into my bid stating that the bid price would be reduced providing they used the war surplus item and the war surplus item would cost me $1.40.

Q. Do you recall the date of that rider, as you call it?

A. The rider was attached to the bid, the same date I put it in, October 13th.

Mr. Kelley: May I interrupt? I am not making an objection. The government has these dates in their possession. They are right here. The bid is here.

The Court: Yes. They may have it in some memorandum.

The Witness: I haven't the memorandums. I tried to study these bids before I left Chicago. It was either the 9th or 13th. Those are the only two days I have confused.

Mr. Aug: Your Honor, we are just developing the circumstances. We are not interested in introducing the E-1 bid. The E-1 bid had never become a contract so we have no purpose to be served by introducing the instrument itself.

Mr. Kelley: They have already gone into it and testified to its contents. We are very much interested in going into it.

Mr. Aug: We don't want to go into it.

The Witness: I didn't receive a bid—I didn't receive the order on that. My price was too high. I wasn't given the order, so I haven't—I didn't bring my records on that particular bid.

Mr. Kelley: Once the government has on its direct examination gone into his bid and into the contents of his bid, as to whether it was surplus, may I request that document be produced.

Mr. Aug: No, we haven't. We asked about whether it was produced or—

Mr. Kelley: They have asked him about his bid. It is in their case.

Mr. Aug: We have asked him if Opper was the proposed supplier in the E-1 kit.

Mr. Kelley: For the last five minutes, this Gentleman in response to questions of government attorney has said he filed a bid on the E-1 kit. They asked him what date it was. He said the 13th of October. He said: "What did you put in there?" He said: "I put in a rider." They have the document and they are reluctant to produce it.

Mr. Aug: No, we are not reluctant to produce it. I am saying I don't know whether we have it. If we have the E-1 we will introduce it.

The Court: Each side try your case as you think it should be tried. I do not expect the defendant to tell the government how to try their case and I do not expect the government to tell the defendant how to try their case. If you wish to introduce something, you may on either side, if it is proper and if you do not, you don't have to. There isn't anything pending before the Court.

Mr. Aug: I would like to continue with this witness, your Honor, and if we can find the E-1 kit, it will be offered in evidence. In the meantime I would like to continue with the witness in the interest of expediting the trial.

The Court: You may proceed. There is nothing before the Court right now that I know of.

Q. Now, Mr. Buchsbaum, did you submit a bid on the D-1 kit?

A. I did.

Q. And do you recall the approximate date of submitting that bid?

A. It was later than the 13th. I am confused on the date. A little bit later. I wish you would help me on that date.

Mr. Aug: Mark this for identification as Exhibit 21.

Thereupon a document was marked for identification as Plaintiff's Exhibit No. 21.

Q. Mr. Buchsbaum, I will hand you an instrument marked Plaintiff's Exhibit 21 for identification and ask you if you can tell us what that document is.

A. That is a bid form calling for the D-1 kit and includes my bid, and that was requested to be in the government office on October 19th. It was made out October 18th, therefore, it was personally delivered. I personally delivered it to the Air Force on the 19th. My brother signed it as treasurer. That is his signature.

Q. The signature on this document is Emanuel V. Buchsbaum. Can you identify that signature?

A. Yes, I can.

Q. Who is that?

A. He is the treasurer and my brother.

Q. What is the name?

A. Emanuel V. Buchsbaum.

Mr. Aug: We would like to offer Plaintiff's Exhibit No. 21 into evidence, if the Court please.

Mr. Kelley: No objection.

The Court: It may be admitted, marked Government's Exhibit No. 21.

Thereupon said bid on the D-1 kit was admitted in evidence and marked as Plaintiff's Exhibit No. 21.

Q. Mr. Buchsbaum, will you examine Exhibit No. 21 and see if you find theron a list of sub-contractors which was furnished along with the bid?

A. I find a list here.

Q. Who is your sub-contractor with respect to the furnishing of goggles?

A. Mr. Opper. It says "William Opper, Chicago, Illinois, Goggles, Sun Type, three to a kit, 7500."

Q. Now, Mr. Buchsbaum, I will hand you Government's Exhibit No. 8, which is contract No. 17438 between the Department of the Air Force and the S. Buchsbaum Company. Are you familiar with that contract, sir?

A. I am.

Q. Will you tell the jury what that contract is basically for?

A. Sustenance kits, D-1. And the quantity on that one—I don't see the quantity. I think this was for 2500. I don't see the quantity on this one.

Q. But it is the contract between you and the government?

A. It is the contract between the government and my firm for 2500 emergency kits, D-1, that's right.

Q. What is the date of that contract, sir?

A. The contract was approved January 6, 1951. It was signed by me before that because it comes in to me earlier. I am trying to see when it was—when it came in to me originally. It doesn't seem to have the original date.

Q. Let me see it.

A. (Witness hands document to counsel.)

Q. I will ask you to look at the second page of the contract and see if there isn't a date on that.

A. 16th of November and in all probability I received that within five or six days after that date. That would make it around the 22nd or thereabouts of November that I would receive it or sign it and it doesn't become a contract until I return it to Wright Field and it comes back properly signed from the Air Force.

Q. That November 16th date you are referring to, what was the year?

A. 1950.

Q. Have you been complying with the terms of that contract?

Mr. Kelley: I object. It calls for a conclusion, a contract of 18 pages.

Q. How many survival kits were to be supplied?

A. 2500 on this original contract, which was subsequently increased fifty per cent, to 3750.

Q. Have you supplied the survival kits called for by that contract?

A. I have. This has been completed.

Q. In the survival kits furnished on that contract were there goggles in the survival kits?

A. There were three goggles to each kit.

Q. Who supplied those goggles to you?

A. Mr. William Opper.

Q. Mr. Buchsbaum, I will hand you Government's Exhibit No. 9, which is contract 18136, between your company and the Air Force. Will you state what that contract calls for?

A. It is a very similar contract to the first one and calls for 2500 D-1 kits that was awarded to our company on an invitation for bid, informal invitation for bid, competitive bid, calling for 2500. An option calls for fifty per cent increase, which was subsequently increased to 3750 total. This contract has been completed.

Mr. Kelley: May I ask the number of that?

Mr. Aug: This is No. 9.

Mr. Kelley: Number of items.

Q. How many items does it call for?

A. 2500 kits increased before completion to 3750 total, three goggles to a kit.

Q. And the kits referred to in that contract, have you supplied those to the government?

A. The order has been completed.

Q. In those kits are there any goggles?

A. Three goggles to a kit.

Q. From whom did you get those goggles?

A. From William Opper, Chicago.

The Court: We better stop now. I suggest, if it is agreeable, that we recess now until 2 o'clock. Come back please, Mr. Buchsbaum.

Members of the Jury, we are about to recess the further hearing of this cause until 2 o'clock this afternoon. Bear in mind the usual admonition.

Adjourn, if you please, until 2 o'clock

Thereupon the further proceedings in the trial of this cause were adjourned until 2 o'clock of the afternoon of the same day.

Afternoon Session.

Wednesday, May 14, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

CHESTER BUCHSBAUM resumed the witness stand and testified further on **direct examination**, as follows:

By Mr. Aug.

Q. Mr. Buchsbaum, I will hand you Government's Exhibit No. 11, which is contract No. 26641 between your company and the Air Force. I will ask you to state in substance what that contract calls for.

A. This contract calls for D-1 kits to the extent of 6000. It is a sustenance kit for the Air Force.

Q. Now, do you know, of your own knowledge, whether goggles are a part of that kit?

A. Sun goggles are a part of this kit.

Q. Can you tell the jury whether you have supplied the kits called for in that contract?

A. No. This contract is in work. We have shipped a small part of it. We anticipate completing it in July of this year.

Q. Now, in the survival kits, or in the kits that have been supplied to the government is a goggle a component of that kit?

A. Three goggles in every kit.

Q. Where did you get the goggles that went into the kit?

A. From William Opper, Chicago.

Q. Have you ever gotten goggles from any other supplier?

A. Never bought any goggles for the government to be supplied to the government from any other supplier. I have purchased goggles for our wholesale division. We have various goggles and sun glasses in our catalog.

Q. Let me ask you this: With respect to contract No. 17438 and contract 18136 and contract 26641, have there ever been any goggles that went into those kits that was provided by any man other than Opper?

A. No one else except Opper.

Mr. Aug: Mark these for identification 22, 23 and 24.

Thereupon several documents were marked for identification as Plaintiff's Exhibits Nos. 22, 23 and 24, respectively.

Q. Mr. Buchsbaum, I will hand you Plaintiff's Exhibit marked for identification as No. 22 and ask you if you identify that exhibit.

A. It is my letter.

Q. Will you state what it is?

A. I requested permission—

Q. Will you just identify what the nature of the instrument is?

A. It is in reference to contract 18136, requesting permission to use certain merchandise in my contract.

Q. Who is the author of the letter?

A. I wrote the letter, dictated it and wrote the letter and signed the letter—dictated and signed it.

Q. What is the date of the letter?

A. January 8, 1951.

Q. And with what contract is it referred?

A. With the kit contract 18136.

Mr. Aug: Your Honor, I would like to offer in evidence, Government's Exhibit No. 22.

Mr. Kelley: No objection.

The Court: It may be admitted in evidence.

Thereupon said letter was admitted in evidence and marked as Plaintiff's Exhibit No. 22.

Q. I will hand you Government's Exhibit 22 and ask you to read it to the jury, please.

A. (Reads) "In the manufacturing and assembly of the D-1 kits, we ask permission to use the following merchandise which is guaranteed to meet all government specifications and is in first class condition, which of course will be subject to the inspection of the Air Force Inspector.

"Item No. 9 File Flat Smooth, one only required to each kit. File to be the same as the attached sample. We want approval as to whether or not this file is satisfactory as to the word 'smooth'.

"Item No. 11 Sun Goggles, Type 1, 3 pair of goggles to each kit. We ask permission to use sun goggles as per the attached samples that have been made in accordance with specifications 74-G-76-35 and 74-G-76-38.

"Item No. 13 Sun Hat, Reversible, 3 hats required to each kit. Sun hats that have been made in accordance with specification 44-G5062, O. D. on one side, yellow on the other. See attached sample.

"Item No. 32 Whistle Police, Plastic, 1 only whistle to each kit. We ask permission to use whistle as per attached sample, which has been manufactured in accordance with U. S. Navy specifications. Each whistle comes complete with a chain attachment.

"The above materials will be furnished on this contract without additional cost or without any change in the contract price.

"Thanking you for advising us further concerning this matter, we are Yours very truly, S. Buchsbaum & Co., Chester Buchsbaum, President."

Q. I will hand you Plaintiff's Exhibit 23 marked for identification and ask you to state what that document is.

A. This letter was written January 28th. It is the same letter as the letter I just read, except—

Q. Take another look at that date, Mr. Buchsbaum.

A. January 8, 1951. Same letter as I have just read, except it refers to contract 17438, which is the second contract.

Q. Is that your signature on that letter?

A. That is my signature.

Q. And the contents of the letter the same as the letter you just read to the jury?

A. It is identical.

Mr. Aug: We would like to offer this in evidence, your Honor.

Mr. Kelley: No objection.

The Court: Very well. It is admitted in evidence.

Thereupon said letter was admitted in evidence and marked as Plaintiff's Exhibit No. 23.

Q. Mr. Buchsbaum, did you ever receive any reply to your letters of January 8, 1951?

A. I did.

Q. Did you receive any approval which was requested with respect to the goggles?

A. I received an approval.

Q. Mr. Buchsbaum, I will hand you the instrument marked Plaintiff's Exhibit 24 for identification and ask you to tell the jury what that exhibit is?

A. This letter is written to my firm, dated February

12, 1951, subject, contracts 17438 and 18136, and it says,— Want me to read it?

Q. No. This letter was received by you in response to your letters of January 8th; is that correct?

A. In response—It doesn't state.

Q. Is that the only communication you had?

A. The only written communication I had with Wright Field or the contracting office was my letter of January 8th, so this must be in reply to my January 8th letter.

Mr. Aug: Your Honor, we would like to introduce Plaintiff's Exhibit No. 24 in evidence.

Mr. Kelley: No objection.

The Court: All right. It is admitted in evidence.

Thereupon said letter was admitted in evidence and marked as Plaintiff's Exhibit No. 24.

Q. Mr. Buchsbaum, will you state the date on that letter?

A. February 12, 1951.

Q. Will you read the contents of the letter to the jury?

A. (Reads) "The following list of samples submitted for approval as components of the D-1 Survival Kit, are hereby approved: a. File, Flat, Smooth, 6-inch. b. Goggle, Sun, Type 1. c. Hat, Sun, Reversible. d. Whistle, Police, Plastic

"Any samples that were submitted for approval not covered here will be forthcoming upon receipt of same from the Aero Medical Laboratory. (Signed) Robert E. Adams, Contracting Officer."

Q. Is there any reference to the contract numbers in that letter?

A. Yes. It refers to contract 17438 and 18136.

Q. Mr. Buchsbaum, in your letter of January 8th, which is Plaintiff's Exhibit 22 and 23, you refer in there, "Item No. 11, Sun Goggles, Type 1, 3 pair of goggles to each kit. We ask permission to use Sun Goggles as per the attached samples that have been made in accordance with

"certain specifications." Do you know of your own knowledge whether those goggles accompanied the letter?

A. They did. I carried that letter in with the samples of all articles.

Q. You personally took this letter and the samples?

A. I brought the samples along and brought them in to—at that time, the negotiator was Captain Mitchell.

Q. Who did you turn the goggles over to?

A. I am a bit hazy on that. I believe that Captain Mitchell had me bring them over to the lab., the Aero Med. Lab., with a duplicate copy of this letter. We generally write two to three copies of a letter and I brought over one copy and I brought them over to the lab. and delivered them to the lab.

Q. To anybody in particular in the lab.?

A. I don't remember if I gave—to whom I gave them. There are several men in the lab. I don't remember the name.

Q. Do you recall who was present in the lab.?

A. At that time, I don't.

Mr. Aug: We are through with the witness, your Honor.

Cross-Examination, by Mr. Kelley.

Q. Mr. Buchsbaum, so that I get, and in turn the Court and jury will get the straight of it, do I understand that in the month of October 1950 you on behalf of your company submitted, that is to say filed bids with the Air Force, at Wright Field, first as respects a contract for the assembly and delivery to the government of a kit known as a D-1?

A. I did, yes, sir.

Q. And at or about that same time you also submitted a bid on behalf of your company for the assembly and the delivery to the government of a kit known as an E-1 kit?

A. Yes.

Q. If I recall your testimony you stated that you filed your bid as to the E-1 kit on the 13th of October 1950?

A. That is right.

Q. If I recall your testimony correctly you stated that you filed your bid on the D-1 kit on or about the 19th of October?

A. Right.

Q. Now, sir, I right in understanding that you were unsuccessful in obtaining the contract on the bid which you first filed? That was the bid for the E-1 contract.

A. Yes, sir.

Q. And do you know that the successful bidder wherein you were unsuccessful on the E-1 kit was the Cappel-MacDonald Company of this city?

A. Yes, sir.

Q. Do I understand your testimony properly that you were successful in securing a contract based upon your bid as respects the D-1 kit?

A. Yes.

Q. Now, to attempt to clarify further, am I correct in understanding that one of the component parts of the E-1 kit, that is, the contract you didn't get but which you bid on, the E-1 kit, was a ski goggle?

A. A ski goggle is correct.

Q. And that one of the components in the D-1 kit contract that you did get was a sun goggle or sun glass?

A. That is right.

Q. Which term is correct, "sun goggle" or "sun glasses"?

A. The Air Force call it "sun goggle". It is an anti-glare goggle, is what it is.

Q. So, when you prepared to submit bids, both as to E-1 and D-1, it was necessary for you to familiarize yourself with all of the various components that were required to go into that kit in the specifications?

A. That is right.

Q. In order to learn that, did I understand that you went to Wright Field and came in touch with Mr. Hollifield, one of the defendants in this case, and that he showed you or exhibited to you the items of merchandise, that you call them, that were required to compose the E-1 kit?

A. Yes.

Q. And among those items of merchandise or component parts was a pair of ski goggles?

A. Yes.

Q. Did you confer with anyone at Wright Field along similar lines for similar purposes in order to acquaint yourself with the component parts which composed the D-1 kit, that you ultimately secured a contract to purchase?

A. I did.

Q. And was there exhibited to you a specimen sun goggle as was required in the D-1 kit?

A. There was.

Q. Am I correct in understanding that you found at that time some difficulty in securing price quotations or available manufacturers through whom you could purchase these component parts that you in turn would have to put into the kit along with other components?

A. Yes.

Q. I believe, to use your words that you said you had a great deal of difficulty securing a price?

A. That is right.

Q. Now for the moment, let us confine ourselves to the E-1 kit, as to which you were an unsuccessful bidder. Among the components which you would have had to assemble in order to compose completely this kit was ski goggles. Correct?

A. Yes.

Q. I believe you said when you looked around the country, so to speak, to see where you could obtain that item that you had difficulty in securing a price?

A. That is right.

Q. And you enlarged by saying that the American Optical Company refused to manufacture or did not appear willing to even manufacture the item?

A. Originally that is true.

Q. But ultimately they expressed agreement to manufacture it but said they would not do it for less than $8.50 an item; is that correct?

A. That is correct.

Q. Now, at the time that you were undertaking the task of learning where and from whence you could get these various components for the purpose of preparing your bid on the E-1 contract which contained the ski goggle, it was rather a progressive process, was it not? You would find and secure an item one place and then go on to your next item in preparing your bid.

A. I had several people working on component parts.

Q. You had other people in your organization working on the bid?

A. I had approximately three engineers working on the bid, to prepare the bid.

Q. And then as you approached the date line for filing that bid, which was the 13th of October, I assume that you practically had completed or enlarged to where you could acquire almost all of the component parts; is that right?

A. That is right.

Mr. Kelley: May I at this time call upon the government, respectfully, to produce for my examination of Mr. Buchsbaum, as to which you elicited testimony on the direct examination, the bid on the E-1 kit?

(After counsel for the government produced said document:) Would you please mark this for identification as Defendant Opper's exhibit?

The Court: Mark it as Defendants' Exhibit A for identification.

Mr. Kelley: This purports to be a bid submitted by Mr. Buchsbaum in connection with the E-1 kit contract.

Thereupon said bid on the E-1 kit was marked for identification as Defendants' Exhibit A.

Q. Mr. Buchsbaum, I hand you what has been marked for identification Defendants' Exhibit A. Will you examine it and state whether or not you can identify it?

A. That is a bid.

Q. Will you state first, can you identify that?

A. Yes, I can identify it.

Q. What is it?

A. The bid that I submitted to the government for E-1 kits.

Q. That is the bid that you submitted on the 13th of October 1950?

A. That is right. That is correct.

Q. Now, that document consists of several sheets, does it not?

A. Yes, consists of quite a few.

Q. Each relating to some required data that must be furnished with a bid?

A. That is correct.

Q. In relation to the size of your company, for example?

A. That is correct.

Q. Delineating various items that you propose to deliver and procure?

A. That is correct.

Q. And in part indicating sources of supply from which you intend to procure?

A. That is correct.

Q. The prices at which you expect to be able to procure?

A. That is correct.

Q. Coupled with the unit price for which you proposed to sell to the government?

A. That is right.

Q. Multiplied into the number of units desired by the contract?

A. Right.

Q. Resulting in a total contract price?

A. Right.

Q. Now I will ask you to refer inward of the several sheets—since they are not numbered it is rather hard for me to identify them—Referring to the sixth sheet from the front,—

The Court: Call that Defendants' Exhibit A-1 for identification.

Thereupon said sixth sheet from the front of Exhibit A was marked for identification as Defendants' Exhibit A-1.

Q. Subdivision 1 refers to the—the sixth sheet which is to be found in Defendants' Exhibit A—I do not wish you to read from the contents, but will you state whether or not on that sheet there is set forth any reference to ski goggles and any price stated in connection therewith?

A. There is ski, mountain type 1 goggle mentioned here and a pure estimate of $5 each.

Q. Quoting the word "pure" estimate?

A. Yes. At the time I put the bid in I didn't have the price from the American.

Q. At the time you composed that sheet with that word, you did not have a definite price?

A. I did not.

Q. Nor did you have a definite supplier.

A. Yes. I don't mention the supplier.

Q. You didn't have a definite supplier ready, willing and able to furnish that item at an agreed price, did you?

A. I want to see if the supplier is listed in here.

Q. I don't mean to hurry you. Will you look further toward the front of that Exhibit, Defendants' A for identification, specifically to the third sheet, being small in size, to which I might refer for identification as Defendants' Exhibit A-2?

Thereupon said sheet in Defendants' Exhibit A for identification was marked for identification as Defendants' Exhibit A-2.

Q. (Continued) I have been directing your attention to the third sheet, being small in size, which has been marked for identification Defendants' Exhibit A-2. You identify and recall that, do you?

A. Yes. It was an alternate bid that I put in there.

Q. Will you state when, in point of time, you attached that alternate bid, as compared with the date you actually filed the bid as a whole?

A. To my recollection, it was filed at the same time I put the bid in, the same day, the 13th.

Q. Now, you had to have acquired certain specific information before you were able to attach that alternate bid, did you not?

A. That is correct.

Q. I recall that in your direct examination this morning, you made this statement, or a statement in substance to this effect, that you had gone up to the Field in connection with filing this bid and that when you learned that the goggles, Opper goggles were approved then and because of that knowledge and their approval, you attached to your bid this alternate and filed it?

Mr. Aug: Objection. There is nothing in the record that indicates that statement was made.

Mr. Kelley: We will have to go back to the record. I will withdraw the question, if the Court will permit me.

Q. Did you make the statement to this effect, that when you learned that these goggles were approved, you included in your bid an alternate proposal and filed it?

Mr. Aug: Objection. There is nothing in the record to that effect.

Mr. Kelley: Well, I will contest that.

Mr. Aug: Let's have a reading of the record.

Mr. Kelley: We will have to go back, perhaps recess.

The Court: Are you objecting?

Mr. Aug: To the best of my recollection that statement is not in the record.

The Court: Ask him if he testified to that this morning. If there is any dispute about it, we have an official court reporter here.

Mr. Kelley: I am willing at this moment to withdraw the question and approach it from a somewhat different direction.

Q. Mr. Buchsbaum, at the time you filed this bid, had you had in your possession a goggle, that is to say, a ski goggle of a type which you proposed to offer to the government as an item, a component in this contract, if you got it?

A. I did.

Q. From whom had you obtained that goggle?

A. Mr. Opper.

Q. And you had it in your hands, did you not?

A. I did.

Q. Did you bring that goggle to Wright Field?

A. I did.

Q. Did you do that prior to filing this bid?

A. I did, the same day, the morning.

Q. But at an hour prior to the hour on which you filed that bid?

A. Correct.

Q. Now just tell the Court and jury, if you will, where you took that set of goggles, who was there and what was said with reference to them?

A. I brought the goggles to the Aero Med. Lab. which is in Wright Field. Mr. Hollifield was the project engineer on the E-1 kit. He was there.

Q. That is on the E-1 kit, you say?

A. On the E-1 kit.

Q. What we are dealing with here.

A. He was the project engineer; he was in there and also in the office a man by the name of Mr. Hanselman, Mr. Barker and a Mr. Murray, at that time, who later became an officer.

Q. May I pause for a moment? Are you familiar with their full names, or do you know only the last names of those gentlemen whom you just mentioned?

A. Mr. Hollifield we called "Bob".

Q. You mentioned a Mr. Hanselman.

A. I don't know his first name.

Q. You mentioned a Mr. Murray?

A. I don't know his first name.

Q. Does the name Norris suggest anything to you?

A. No, it doesn't.

Q. Hanselman, Murray, Barker, Hollifield?

A. Yes.

Q. Were there any others?

A. To the best of my knowledge nobody else.

Q. Would you proceed then, please, and tell us where you met those gentlemen and what took place and what was said?

A. I told them I was having difficulty obtaining a price and a source on goggles and that "I have a pair of war surplus goggles here that look to me like it was exactly the same as the specification." I read over the specification and it looked identical and I showed this pair of goggles to the boys at the lab., the boys that I named, all of them.

Q. Those were goggles that you obtained from Mr. Opper?

A. Yes, sir.

Q. And brought personally with you to the Field and presented them as you have said?

A. Right.

Q. Now would you please continue as to what was said and by whom?

A. Mr. Bob Hollifield picked up the goggles and said: "I have seen these goggles before. They are no good." He said: "I rejected them yesterday or the day before. I don't remember." I forget what he said at that time. He said: "I rejected them very recently." I said: "Why? why were they rejected?" I wanted to know the reason. He said: "They have a component part missing, that is, the extra lenses. The goggles require a pair of extra lenses, according to the specification." And Mr. Hanselman, who was right there, with me, knew as well as I know that the extra lenses were there.

Q. Where were these extra lenses? Describe these goggles to the Court and jury. Were they in a case or not?

A. The goggles were in a case; they are folded in two and they are compactly put into a sort of a semi-circular case with a snap fastening a little flap that goes over the case.

Q. It is a leather case?

A. Leatherette. In the two flat ends of the case is a piece of felt looks like it is there to protect the glass from scratching, but behind these pieces of felt, on each side, was an extra lens.

Q. Plastic?

A. Plastic lens. There were two lenses in the case.

Q. As to the lenses in the goggle itself, were they glass or plastic?

A. They were glass.

Q. But these extra lenses were of plastic?

A. Were of plastic. I said: "They have the glasses here. You are mistaken. You haven't looked in this case very thoroughly because it is here." And Mr. Hanselman says, "Yes, that is right." He knew they were there, too. He took them out and showed them to Mr. Hollifield.

Q. By that you mean you extracted these extra plastic lenses in Mr. Hollifield's presence and demonstrated they were in the case all the time?

A. Mr. Hollifield said he didn't know they were there. "This makes it different," he says, "Just a minute." And with that, to my recollection, he and Mr. Hanselman and Barker, I am not sure about Murray, they went in the next room across the hall, while I waited and they were comparing them with a similar pair of glasses that they had across the hall, which was a component part. Then about, I would say, ten minutes later they came back and Mr. Hollifield said: "I will approve these glasses, but," he said: "If I approve them for you," he says, "you understand they are approved for everyone else." He says, "I can't only approve them for you because that would be unfair to the other bidders." I says, "That is correct." He says, "Now I refused to approve them for Cappel-MacDonald either this morning or yesterday," I don't remem-

ber that part of it. "So, I will have to call them and tell them that I am approving these. It is unfair if I don't."

Q. Do I understand a little earlier in this conversation he had said that either a day or two before, shortly before he had told some bidder that they were not acceptable, because they didn't have an extra plastic lens?

A. That is what he told me.

Q. Now then, coming to the point of the conversation that you just referred to, he stated that having earlier told someone from Cappel-MacDonald that they were not acceptable because they didn't have the extra lens, now having learned that they did, he felt impelled, in fairness, to notify them of the change and of their acceptance; is that correct?

A. That is correct.

Q. Was there such a call made by anyone in your presence?

A. Mr. Hollifield put the call through to Cappel-MacDonald while I was there. I didn't hear the conversation. He told me he was going to tell them they were approved and they could be used by them in that manner, the same as I could.

Q. Now then to go back, when you came to that meeting that day, you had these goggles. It was your business to and you did submit them for examination and approval. Correct?

A. Right.

Q. As of the moment that you brought them with you, you had not completed your bid in every respect, had you?

A. I wasn't satisfied that I had the price down as low as I would like to bring it, because I was trying to get an order, and in order to get an order we try to bring the price down low and we really worked to the last minute trying to bring down all of the costs to the government.

Q. To be specific, referring again now to the small sheet marked for identification as Defendants' Exhibit A-2, designated alternate bid, I ask you whether or not you attached that alternate bid and made it a part of your bid

after you had this conference with the gentlemen you named and after they had told you that those goggles were acceptable?

A. I did.

Q. And was it because of their examination and stating that they approved that you did attach that alternate bid?

A. I did.

Q. And does that alternate bid relate to precisely those surplus glasses?

A. It does.

Q. And what was said there as to price? You had mentioned before, up to this moment you could get no price. The best you got was $8.50 from American Optical to supply a new one and I understand you put in an alternate bid, stating in its own terms "surplus", at what figure?

A. $1.40 each. Although I said "Inside of $5.00 each", because I estimated even though I couldn't get a price I thought I was going to be able to get them for $5.

Q. It ultimately proved $8.50?

A. At that time it ultimately proved $8.50. When we finally got the price from American Optical, our first price, they came down a little bit, but not very much.

Mr. Kelley: May I have that, please, for a moment? Mark this for identification as Defendants' Exhibit B, inquiry from Buchsbaum to Opper.

Thereupon said inquiry was marked for identification as Defendants' Exhibit B.

Q. As I recall, Mr. Buchsbaum, this morning during the course of your direct examination, you were asked when and under what circumstances you first made the acquaintance of William Opper, and I believe that you replied that somewhere around the first week of October, as best you could recall, 1950; that you had spoken to him on the 'phone prior to having a face to face meeting. Is that correct?

A. That is correct.

Q. As I recall, you also stated that someone in your company, on your behalf, directed some form of writing to Mr. Opper in relation to some component of a kit, in which you were interested. Am I correct in that?

A. That is correct.

Q. Am I correct in understanding that at that time you associated Mr. Opper solely with a compass?

A. Originally, right.

Q. Originally and at the time of your meeting?

A. That is right. That is what I called him in on.

Q. And I believe you said you learned of Mr. Opper and his association with a compass from Mr. Hollifield at Wright Field?

A. That is correct.

Q. As I recall it, you stated that in discussing generally with Mr. Hollifield possible sources for many of the components, in time in your conversation you came to the compass that you asked Mr. Hollifield, could he indicate where you might inquire as a source of obtaining that compass. Did you so state this morning?

A. Yes, I did.

Q. And did you state that at that point Mr. Hollifield said there was a man Opper somewhere in Chicago who he believed had a compass, or words to that effect?

A. Approximately that way.

Q. Did you then pursue and determine, "Well, where will I find this man?" and ask Mr. Hollifield "Where is this man? What is his 'phone number?"

A. I tried to get all the information I could possibly get, when I worked on a bid and if I didn't get the address and the telephone number, I would definitely ask him for it. So, I am certain—I don't exactly remember, but I am certain I would have asked. I did ask the address and the 'phone number. Mr. Hollifield didn't know. In my records at home where I keep my—in my little black book I carry with me, I didn't have any 'phone number or address in there. I had to look it up myself and had considerable difficulty in obtaining it.

Q. Let's pursue it just a little further. At the moment you first heard the name Opper, it was in connection with a compass and that name was uttered to you by Mr. Hollifield; is that right?

A. He gave me the name. He didn't utter.

Q. For the first time that name was given you. And then did you not say "Well, where is this man? What is his address? What is his full name?" That being the first time you ever heard the name.

A. Yes. I asked him where he could locate Mr. Opper. I might not have asked for his first name.

Q. And his reply, as you recall, was that he didn't know, just Chicago?

A. He said he was in Chicago and I could find him there somewheres, he didn't know where.

Q. Now having returned to Chicago, you knew nothing more than the name Opper. No name or initials other than Opper and the fact that you believed he knew something or had compasses?

A. That is right.

Q. I show you what has been marked for identification Defendants' Exhibit B. Will you examine it and state whether or not you can identify it?

A. That is a purchase inquiry. We have a regular purchase inquiry that we send out from our purchasing department, dated October 7th.

Q. Is that a purchase order?

A. No. It is an inquiry.

Q. Inquiry as to what?

A. As to compasses, magnetic and case, specification MIL-C-6235, requesting prices on 14,200 and delivery.

Q. And relates only to compasses?

A. Relates only to compasses.

Q. Is dated when?

A. Dated October 7, 1950.

Q. And is addressed to?

A. William J. Opper, 1250 North Stone. That is where we found him in the 'phone book. William J. Opper, 1250 North Stone, Chicago, Illinois.

Q. It is from your company.

A. From our company.

Q. Thank you. Now, subsequent to the issuance of this inquiry, did you come face to face with William Opper?

A. I did.

Q. Where?

A. In my office.

Q. Was it shortly after the date of the instrument just referred to, Defendants' Exhibit B for identification?

A. I would say it was within 48 hours, at least that quickly.

Q. Now then will you state to the Court and the jury the conversation that you had with Mr. Opper at that time and where was it?

A. That was in my office.

Q. Would you state the conversation you had then with Opper?

A. Mr. Opper came in my office and showed me the compass, told me the price, and he told me it was in production, that he had purchased the manufacturing plant of Waltham Watch Company used to own, went into bankruptcy and he bought the manufacturing plant to manufacture these compasses.

Q. Compasses?

A. Compasses and—

Q. Did he indicate he bought the plant or the dies?

A. No. He bought the equipment to manufacture.

Q. Bought the equipment to make—

A. Bought the equipment to manufacture the compass.

Q. Go on.

A. And he quoted me the price and in our discussion he asked me what I was going to use them—in what conjunction I was going to use them, where I was going to use them. I told him I was working on Air Force contract, which he knew from the inquiry. He wanted to know how I was going to use them. I told him we were going to put them in a survival kit. I had the specifications on my desk, started talking to him, and I mentioned

I was having some problems getting some of the items, and I thought maybe seeing he was in the compass business maybe he knows something of the items, maybe he could help me in locating sources of supply. So I read over the items, and in reading over the items we came across the goggles, ski, mountain, and he said "I think I have seen some of those. Maybe I will pick you up some new ones. Will that be satisfactory, war surplus?" I says, "I think it is a good idea to get them in. I will be glad to submit them, because we are trying to get these glasses. I am having a hard time." And then we went from there, I had the—I was working at the same time on the D-1 kit.

Q. Working on the D-1 kit at the same time as the E-1?

A. That is right. I had the D-1 specifications in front of me. I said: "I have some goggles here too, you know." He read over those items and he said: "I have seen glasses. I think I know some place on them."

Q. The sun glasses were a required component of the D-1 kit which you ultimately got a contract to produce?

A. That is correct.

Q. And the ski goggles which you had mentioned in that conversation, shown him the pictures, whatever it was, were a component of the E-1 kit which you bid on but failed to get. Correct?

A. That is right.

Q. Proceed, please?

A. And he says, "I will get them in as fast as I can" and I says, "O. K., the faster the better." And that was the end of that particular conversation.

Q. Now, having in mind that it was as you said, probably about 48 hours after October 7th when you issued this purchase inquiry that Mr. Opper actually came into your office, which would have placed it about October 9th. Correct? There remained only a few days in which you could file these bids, wasn't that true?

A. Very few.

Q. Your deadline for the E-1 was the 13th, four days later, and as it turned out your deadline on the D-1 was

the 19th, six days or seven days later. That is what was meant when you said the quicker the better, I take it?

A. That is right.

Q. Now then, thereafter did William Opper bring to you a sample ski goggle?

A. He did.

Q. Now, the ski goggle was the component referred to and applying to the E-1 kit that you bid for and failed to get?

A. That is right.

Q. And was that sample ski goggle turned over to you by Mr. Opper, in accordance with your earlier request, that he get one? Was that the ski goggle that you brought up to Wright Field, put on the table, talked about the extra lenses, as you testified a little while ago?

A. That was it.

Q. And at the same time and also in accordance with your request, did Mr. Opper bring to you a sample of the sun glass, a component related to the D-1 kit, which you bid on and secured the contract on?

A. He did.

Q. And in the same way did you submit that sample furnished you by Mr. Opper at your request to Wright Field.

A. I did.

Q. For an identical purpose?

A. I did, but not for the same party.

Q. Not to the same party?

A. I did.

Q. To whom did you submit the sun glasses?

A. The project engineer on the D-1 kit was Mr. Murray.

Q. The D-1 kit was the contract that you succeeded in getting and the contract which you have fulfilled practically in toto. Correct?

A. Except for the last, two contracts have been completed; one has not been.

Q. You have three contracts all for D-1 kits?

A. That is correct.

Q. But in varying amounts. Your first contract was for a certain number of D-1 kits. Then you got a second contract for an additional number and then a third contract for still an additional number. The first two of those you have fulfilled all of your deliveries?

A. Yes.

Q. Without objection or rejection?

A. That is right.

Q. The government has accepted them?

A. The government has accepted them.

Q. As to the last contract you are in production and expect to complete your fulfillments by July or thereabouts?

A. That is correct.

Q. Now then you state, if I understand you, that the project engineer, and that would be in the land survival unit, would it not, at W ight Field?

A. That is right.

Q. Or the Aero Med. Lab.?

A. Right.

Q. That the project engineer in the land survival unit, who had charge of the D-1 kit that you produced, was Mr. Murray?

A. That is right.

Q. Do you know where Mr. Murray is today?

A. I understand he is an officer. I don't know where he is. I saw him—the last time I saw him was about three months ago. I met him somewheres at Wright Field. I bumped into him and he told me he was going overseas. I haven't seen him since.

Q. Was it to Mr. Murray that you brought the sample sun glasses relative to the D-1 kit for examination and approval?

A. Right.

Q. And was that approval granted to you?

A. It was after inspection.

Q. Both of the goggles that you have referred to, the ski goggle in relation to the E-1 kit in which you were an

unsuccessful bidder, and the sun goggle in relation to the D-1 kit, in which you were the successful bidder, you submitted both of those samples for approval and secured approval of them. Correct?

A. I did.

Q. You obtained both of those samples from Mr. Opper. Correct?

A. I did.

Q. And he furnished those samples at your request. Correct?

A. Yes.

Q. Now, after you had filed your bids with the government, at Wright Field, both on the E-1 and the D-1, I will ask you whether or not, on occasion, you would continue to see Mr. Opper, meet him for one purpose or another?

A. May have met him, not very often, but he may have come up to find out how things were getting along, looking for business, as most people do.

Q. You did, of course, purchase goggles from Mr. Opper, thereafter, after you submitted your bids and got the one contract, then you made additional purchase orders and bought these sun glasses from him, did you not?

A. I did.

Q. And of necessity then you continued to deal with him after you filed your bids and got your one contract?

A. That is right.

Q. Now, I ask this, Mr. Buchsbaum, at any of the times that you had conversation with Bill Opper, after your bids were in, did Bill Opper ever inquire of you as to how a fellow went about going out to Wright Field and seeing people in charge, where he could learn of what might be needed?

A. Yes.

Q. Tell us about that conversation and, first, will you fix it as close in time as you can, or if you can't fix it in time say so?

A. Must have been during October. I don't remember

the date, but it was during the time I was working on bids. I didn't have any orders as yet, but we were working on bids and he was in my office and said: "Maybe there is some other business I can obtain through the Air Force. There may be some other war surplus I can buy and sell. I have a lot of ins." He said: "When the war ended I bought a lot of war surplus and I dealt in them and I know all about these things and I may be able to fit into the picture."

Q. You, yourself, earlier had shown him various components and asked him whether he might locate some of them. Correct?

A. Yes.

Q. Did you understand when you met him that he had been engaged in the toy business and in premiums that go into boxes and things like that; that surplus items are used as parts or premiums?

A. He told me that.

Q. No, this conversation that you had with him relating to the possibility of his going to Wright Field and learning if there might be some other items in which he might do business with the government, would that conversation have taken place after you had taken Mr. Opper's goggles up to the Field?

A. It came after.

Q. In other words, it came after the 13th of October?

A. Yes.

Q. Now, will you state what you told Mr. Opper when he inquired generally about, "How would I go about going to the Field?"

A. I told Mr. Opper he should go to Dayton, Ohio, to Wright Field, and I suggested that he would 'phone Mr. Hollifield for an appointment.

Q. Did he ask for Mr. Hollifield's 'phone number or building, or how he would get in touch with a man named Hollifield?

A. He asked how to get in touch with him. I said: "The easiest way to do, when you get there, ask Mr. Holli-

field how to get there. You have to get a bus. Ask him where to get the bus. I don't remember the building number."

Q. And then to recapitulate, at the time that he made inquiries generally about how to get around at Wright Field, at the time when you suggested that he should call a man named Hollifield and ask him where to come and how to get there, that was subsequent to the 13th of October, when you had filed your bid?

A. Yes.

Mr. Kelley: May I request a little recess at this time? We have gone halfway through our afternoon session.

The Court: You are not quite through?

Mr. Kelley: No, sir. I should say I will probably have another half or three-quarters of an hour at least.

The Court: Take a little recess.

Thereupon a short recess was had.

Q. Mr. Buchsbaum, I have only one or two more questions. Now when, approximately on the 9th of October, at your request, Mr. Opper came to your office, you showed him some pictures and specifications, he being a man in the toy business, when you asked him to see if he could secure for you samples of the ski goggle, which you needed in connection with your bid on the E-1 kit, when you asked him to secure for you samples of the sun glasses or sun goggle that you needed in connection with the D-1 bid, both you and Mr. Opper knew that you were asking him to go into the market and obtain for you samples of government surplus material, did you not?

A. Yes.

Q. When you submitted your bid which is marked Defendants' Exhibit A for identification, and in particular as a part of that bid, you submitted Defendants' Exhibit A-2, your alternate, the government as well knew that you were offering to submit surplus—war surplus goggles, did it not?

A. They did.

Q. It so says right there, does it not?

A. It does.

Q. I will direct your attention to Government's Exhibit 22 in evidence. I believe you read the entire letter to the Court and jury. Now, in this letter you as a contractor are submitting to the government, the other party to this contract, a list of materials which you requested their consent to permit you to use in those kits, all of which constitute deviations from the strict provisions of the contract; isn't that correct?

A. Not necessarily.

Q. Do several of them constitute deviations in some measure?

A. Three of them do; one of them doesn't.

Q. Three had requested deviations from the contract then in existence and one of them does not request the deviation?

A. That is right.

Q. Now, what are the items as to which you requested deviations and give your reasons for requesting them?

A. Sun goggles, Type 1, that is item No. 11; sun hat No. 13; police whistle No. 32.

Q. So that in addition to the sun glasses, sun goggles—

A. "Sun goggles" is better.

Q. In addition to requesting the government to consent to a deviation as respects the sun glasses that we are dealing with here in this case, you asked the government to also consent to deviations as to two other items unrelated to the sun glasses, that is to say, as to the item of whistle and as to a sun hat?

A. That is right.

Q. Now, as your request would be acted upon at Wright Field, the element of the arms organization, that is to say, the land survival unit, which had to pass on the sun glasses did not have anything to do with whistles, did it, as far as you know?

A. No.

Q. Your request for deviation on the whistle would have gone to another branch entirely, wouldn't it, from the land survival, a different branch than the land survival?

A. I don't exactly follow the question. Please repeat.

Q. To what branch of the Air Force, if you know, if you don't know, state, would your request for deviation as to a whistle go, in ordinary channels for consideration and review, and either approval or rejection?

A. It says here that the whistle is made in accordance with U. S. Navy specifications. Therefore, if you want to get a change or deviation, you have to go to the Navy.

Q. And that would be some place other than the land survival unit?

A. Probably in Washington or in Philadelphia.

Q. And when, after the Army had considered your request, the Air Force, as to whistles, ski goggles, sun hats, and the other items, when, as I say, on February 12, 1951, you received the results of their review in response to your review in response to your request, you were told, were you not, as is revealed by Plaintiff's Exhibit 24 in evidence, that your request—"The following list of samples submitted for approval as components of the D-1 survival kit are hereby approved" and that included not only the sun goggle, Type 1, but the sun hat and the whistle as well?

A. And the file as well. That was not a deviation, the file.

Q. With respect to the other three items, the goggle, sun hat and whistle?

A. That is right.

Q. But all three requests for deviation were approved. Correct?

A. Yes, sir.

Mr. Kelley: That is all.

Mr. Svoboda: No further question, your Honor.

The Court: Anything further on behalf of the government?

Mr. Aug: Yes, if your Honor please.

The Court: Redirect. All right.

Redirect Examination, by Mr. Aug.

Q. On October 13th of 1950, you took goggles to Wright Field that Opper had given to you; is that correct?

A. I did.

Q. On that date you changed in your bid on the E-1 kits, from the price that you had originally inserted in there to the price that the Opper goggle was to be furnished; is that correct?

A. I did.

Q. Now, you put that in the nature of an alternate bid?

A. Of an alternate bid, right.

Q. What is an alternate bid?

A. An alternate bid means that the fact—the reason I did that was this: The fact that engineering would approve an item doesn't necessarily conclude that the item will be accepted by the government. It means, as far as they are concerned, they would approve it, but the contracting division must also approve it and until you have that approval it is not approved.

Q. In this alternate bid were you saying to the government, "Take your pick"?

A. I was saying—

Q. Is that what the alternate bid means?

A. I was saying to the contracting officer, "Here is two bids." I gave him the bid with the proper goggle and the bid with the war surplus goggle and it is up to the contracting officer to decide whether he would go along with engineering and approve the war surplus goggle.

Q. Now the goggle had been furnished to you by Opper?

A. That is correct.

Q. Now you went to Wright Field to secure the approval on these goggles; is that right?

A. I did.

Q. Were you performing those services for yourself or for Opper?

A. I was performing the services primarily and only for myself.

Q. Did you receive any compensation from Opper for performing these services?

A. My firm received a discount. If I was able to have them approved, we would get a discount from the price so that they would cost me a little less, so I could bid less to the government.

Q. Let's see if I understand it. Your firm would receive a discount on these goggles if they were approved at Wright Field?

A. If they were approved and if I would get the order and if I didn't get the order I was to get a discount on anything that I was to purchase on kits.

Q. On kits?

A. From Mr. Opper.

Q. In other words, Mr. Opper was to give you the discount; is that correct?

A. Right.

Q. Did you get a discount?

A. I did.

Q. Can you tell us how much that discount amounted to?

A. Total discount on the entire business I gave Mr. Opper came to $4000.

Q. In other words, your trip to Wright Field in which you secured the approval of this goggle was worth $4000 to you, is that correct, to your firm?

A. To my firm. May I answer that a little differently?

Q. Answer it any way you want to.

A. I was trying to buy my goggles for less money. Mr. Opper quoted me a price and he said: "I can't sell it for any other price to you because that is my price to everyone."

Q. But Opper got $4000 less than he would have had, is that correct?

A. Yes, sir. The government saved that money, incidentally, on my prices.

Q. Now, after you returned from Wright Field, this

trip of October 13, 1950, you were asked by Mr. Kelley to state the nature of a conversation you had with Opper, in which I believe it was stated that Opper asked you, "How do you get around at Wright Field?" Was that the substance of the question?

A. He asked me who he should see at Wright Field to find out what type of business he could obtain through war surplus.

Q. And you answered that question by telling him to see Mr. Hollifield.

A. Told him to 'phone Mr. Hollifield and make an appointment.

Q. Can you fix a date as to the time of that conversation?

A. I would say within one week of the 13th of October 1950.

Q. That would be then October 20, 1950?

A. Yes, approximately in that time.

Q. Approximately October 20th. Now, on this October 13th visit you stated there was an approval. Was there anything in writing?

A. No, sir.

Q. You had nothing from the government in writing which said that the goggles that you brought down there were approved; is that correct?

A. Couldn't get anything in writing, I had no contract.

Q. The answer is, there was nothing in writing?

A. No.

Q. On January 8, 1951 you had a letter—you had two letters and you stated that you took those letters and three pairs of goggles to Wright Field; is that correct?

A. Yes, sir.

Q. Now, in the letter of January 8th, in the letters of January 8th, you requested the approval of the goggles which you were furnishing the government; isn't that correct?

A. Yes, sir.

Q. Now the goggles that went along with the letter of

January 8th, was a different set of goggles than you took down there in October of 1950; isn't that correct?

A. Yes, sir.

Q. Then in the letter of February 12, 1951 you were notified by the Air Force that the goggle which you had submitted in the letter of January 8th had been approved; is that correct?

A. Yes, sir.

Mr. Aug: Mark this for identification Government's Exhibits 25, 26, 27, 28, routing record sheets.

Thereupon four routing sheets were marked for identification as Plaintiff's Exhibits Nos. 25, 26, 27 and 28, respectively.

Mr. Buchsbaum, I will hand you Plaintiff's Exhibit, marked for identification as No. 25, and ask you to take a good look at it.

A. (Witness does as requested by counsel.)

Q. I will ask you, Mr. Buchsbaum,—I don't want to hurry you. I will ask you if after the examination that you have made, have you ever seen that instrument before?

A. I don't remember.

Q. You are stating then, to the best of your recollection, you never saw that instrument before?

A. Not written up in this way, I never saw it. I have seen it written up in a different way.

The Court: The question is, did you ever see that document?

The Witness: Not to my knowledge.

The Court: All right.

Q. Were you ever aware of the contents of this instrument?

A. I am aware of it.

Q. When did you become aware of that? Did you know—

Mr. Kelley: The witness started to answer your question.

A. I don't remember.

Q. Do you know the contents of that exhibit on March 12, 1951?

A. I knew Item No. 9, 11 and 13 and 32 and Item No. 14 there was a compass.

Mr. Kelley: Just a moment. If the Court please, the witness doesn't understand this situation. There should be no going into the substance of this until it is presented by a man who can identify it. He doesn't know any more about it than the janitor of this building.

The Court: That is what we are trying to find out.

Mr. Kelley: My objection is, he shouldn't go into the substance of the document, any words out of it.

The Witness: This instrument, to my knowledge, is not in my files in this form.

Q. I will hand you Government's Exhibit No. 26, marked for identification, and ask you to state the contents of that memorandum?

A. I never saw this article, to my knowledge.

Q. I will hand you Plaintiff's Exhibit No. 27, marked for identification, and ask you to take a look at that and state whether you have ever seen that memorandum before?

A. Never saw this article with the exception of a conference we have had before here a few days ago.

Q. That memorandum has never been in your possession?

A. Never been in my possession.

Q. I will hand you Government's Exhibit marked 28 for identification and ask you it you have ever seen that? Take a good look at it. Ask you if that has ever been in your possession?

A. Never been in my possession.

The Court: I don't think that answers the question. Read the question.

The Witness: I never saw it before, except for a few days ago, when I was out in the office here; never saw it before.

Mr. Kelley: Does that mean in the United States Attorney's office?

The Witness: Yes, sir.

Q. Never saw it before?

A. No, never.

Q. Mr. Buchsbaum, you have stated that the goggles furnished by you in the D-1 kit contracts which you had with the government, went through without any objection, to your knowledge, without any objection or rejection, to your knowledge. Is that an accurate statement of what you have said?

A. On the first two contracts.

Q. On the first two contracts.

A. Right. On the third contract, recently, approximately—well, as recent as three or four weeks ago there was an inspector that came in—

Mr. Kelley: Just a moment. I object to this because it is beyond the period involved in this case.

The Witness: Up until a few weeks ago everything was accepted.

Q. You have had a chance to thoroughly examine these exhibits marked for identification?

A. I have examined them and to the best of my knowledge I have never seen any of them. I can definitely state that the last three you showed me. The other one I don't think I have seen it. The articles, I know the articles and that is why it seems that I have seen it but I didn't see it in that form.

Q. Did you have any personal knowledge of the contents of these exhibits marked for identification?

A. I had no knowledge of any of those letters.
Q. Or their contents?
A. Or their contents.

Mr. Aug: We are through with the witness, your Honor.

The Court: That is all then, Mr. Buchsbaum.

Mr. Aug: I think counsel on both sides are willing to call it a day, your Honor. We are getting close to adjournment time. Shall we recess until tomorrow morning?

The Court: I have no objection. Now, Members of the Jury, we are about to recess the further hearing of this cause until tomorrow morning at 11 o'clock. During this recess and adjournment period you will bear in mind my usual admonition and return, if you please, tomorrow morning at 11 o'clock.
Adjourn court until 11 o'clock.

Thereupon the further proceedings in the trial of this cause were adjourned until tomorrow morning at 11 o'clock.

Morning Session.

Thursday, May 15, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

MARIJANE MORRISSEY, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

The Court: Miss?

The Witness: Miss Morrissey, that's right.

Q. Will you state your name, please?
A. My name is Marijane Morrissey.
Q. It is Miss Morrissey?

A. It is Miss Morrissey.

Q. Where do you live?

A. 249 Niagara avenue, Apartment 6, Dayton.

Q. Dayton, Ohio. And what is your occupation?

A. I am secretary.

Q. Where are you working?

A. Cappel-MacDonald Company.

Q. How long have you been employed there?

A. Three and a half years.

Q. Now, in the performance of your duties as secretary, do you have any files in your custody?

A. Yes, I do.

Q. What, in general, is the nature of those files?

A. I have the invitation to bid on contracts and I have in my possession contracts, and I have—

Q. Are you custodian of the files pertaining to the government contracts which Cappel-MacDonald have?

A. I do the filing. I am not the custodian, but I do the filing.

Q. You do the filing?

A. Yes.

Q. Do you have in your possession a letter dated October 10, 1950 from William J. Opper to the Cappel-MacDonald Company?

A. Yes, I do.

Q. And where did you get this letter, please?

A. I got this letter from my files.

Q. May I see the letter, please?

A. Surely. (Produces)

Mr. Aug: Mark this for identification.

The Court: 29 for identification. What is the date?

Mr. Aug: October 10, 1950.

Thereupon said letter dated Oct. 10, 1950, was marked for identification as Plaintiff's Exhibit No. 29.

Q. I hand you the instrument marked as Government's Exhibit No. 29, marked for identification, and ask you to

state whether there is any reference in that letter to a ski, mountain goggle. Can you take a look at the document and see if there is any reference to ski, mountain goggle?

A. Yes, there is.

Mr. Aug: We would like to offer Plaintiff's Exhibit 29 in evidence.

The Court: It may be admitted.

Thereupon said letter dated Oct. 10, 1950 was admitted in evidence and marked as Plaintiff's Exhibit No. 29.

Q. Miss Morrissey, I will now ask you to refer to Government's Exhibit 29 and read that to the jury, please.

The Court: Why can't you read it to the jury?

Mr. Aug: I will.

The Court: Read it out real loud. You always make the witness do the work.

Mr. Aug: I like to share the burden.

The Court: Stand over here so she can see what you are reading.

Mr. Aug: (Reads) "Dear Mr. Cappel:" —This letter is a letter on the letterhead of W. J. Opper, 1250 Stone Street, Chicago, Illinois. It is dated October 10, 1950. "Dear Mr. Cappel: Pardon the hand note but here is the inventory and samples:

"1. ¾" all you want .48 ea.

"2. Mountain ski goggles $1.40 ea., 32,000

"3. Signal Mirror .25 ea., 42,000 (available)

"4. Wrist compass (GS) (Gauge) $2.00, 4100

"A-9 Flying helmet .25, 106,000.

"Buoy Light ? 46,000.

"I have had the helmets and buoy lights in Indianapolis for some time. To work buoy light collapse bottom and put in water. It will burn for about an hour then sink. Used as I understand to be throwa from a plane to form a channel or marking in water. Maybe you have a better idea.

"In package a couple of compasses for the kiddies and the fair sex of the family and one for your Cadillac.

"Do you want to gamble a bit with me and buy the signal mirrors? If so, advise. Can purchase for about .085 each and freight about 1 cent.

"All items in perfect condition and should show a substantial saving over market price today.

"Best of luck and hope you get the award.

"W. J. Opper.

"P. S. A horse shoe for Mr. Wayman's secretary."

Q. Miss Morrissey, you were acting as secretary for the Cappel-MacDonald Company in October of 1950; is that correct?

A. Yes, sir.

Q. In that month, did you have occasion to work on the proposal that Cappel-MacDonald was making to the government on contract 16916?

A. Yes, sir.

Mr. Aug: Mark it for identification.

The Court: Government's Exhibit 30 for identification.

Mr. Aug: Yes, your Honor.

The Court: Is that the proposal?

Mr. Aug: It is the bid, yes.

Thereupon said bid was marked for identification as Plaintiff's Exhibit No. 30.

Q. Miss Morissey, I will hand you Plaintiff's Exhibit No. 30, marked for identification, and ask you if you can identify that instrument?

A. Yes, I can.

Q. Will you state what it is?

A. It is a request for proposal and contractor's proposal for sustenance kit.

Q. What is the date?

A. The date of the proposal is 29 September 1950.

Q. Is that the date that the proposal was submitted?

A. That was the date the proposal was submitted.

Q. Did you participate in the preparation of that proposal?

A. I did.

Mr. Aug: Your Honor, we would like to introduce Government's Exhibit No. 30.

Mr. Kelley: I would like to inquire on the voir dire very briefly as to this instrument.

The Court: Go ahead.

By Mr. Kelley:

Q. Miss Morrissey, this instrument, request for proposal, which is marked for identification as Plaintiff's Exhibit No. 30, that was in relation to what is known as the E-1 kit; is that right?

A. Yes, sir.

Q. Now, counsel for the government asked you a moment ago the date of the instrument and the date on which it was submitted to the government. Would you examine that again and reconsider the date?

A. The date of the instrument is 29 September 1950.

Q. Didn't you know that the date for filing was extended and that date is the filing date?

A. Yes. We have an amendment.

Q. When you speak of filing, you mean filing with the government, do you not, turning it over to the government as your bid?

A. That is right.

Q. I want you to reconsider only in the interest of accuracy on the date. On reflection, isn't it the fact it was not submitted on that date in September but at a later date, to be exact the 13th of October, the date for filing?

A. Yes, sir.

Q. Do you wish to correct your testimony to that extent now?

A. Yes, I do.

Mr. Kelley: That is all. We have no objection.

Mr. Aug: The instrument is admitted into evidence, if the Court please?

The Court: Yes.

Thereupon said bid was admitted into evidence and marked as Plaintiff's Exhibit No. 30.

By Mr. Aug:

Q. I would like to ask the witness, the date of this letter, which you identified as being October 10, 1950, Miss Morrissey. Now the proposal for bid which is Government's Exhibit No. 30 was sent in after that letter; is that correct?

A. That is right, sir.

Q. And you have established the date as October 13th?

A. That is right, sir.

Q. I will ask you to examine Government's Exhibit No. 30 and see if you can find who the sub-contractor is who is to furnish the goggles, pursuant to that bid.

A. We have listed W. J. Opper, Chicago, Illinois, goggles, ski-mountain, 14,200, $1.40 each. Total paid subcontractor, $19,880. That is what is listed thereon.

Q. Now, Miss Morrissey, referring to Government's Exhibit No. 30, in the list of sub-contractors and supply orders, there is Foster Grant Company. It was listed as a supplier of the goggle, and the name Foster Grant Company and goggle, ski, mountain, and the amount that they

were to furnish and the price of the article, have been stricken out. Is that correct?

A. Yes, sir.

Q. Did you do that?

A. No, I didn't strike it out.

Q. You did not. Do you know the circumstances in which it was stricken out?

A. No, I don't.

Q. Then continuing in the list of sub-contracts and supply orders, and second last in the list the sub-contractor listed is the name of William J. Opper. Is that correct?

A. Yes, sir.

Q. I will hand you Government's Exhibit 10, which is contract 16916. That is between Cappel-MacDonald Company and the Air Force. Do you recognize that contract, Miss Morrissey?

A. I do.

Q. And the date of that contract?

A. The date of the contract is November 9, 1950, it is stamped.

Q. I will call your attention to the second page of the contract and ask you what date is stated there?

A. 30th day of October 1950.

Mr. Ang: Mark this for identification 31.

Thereupon a letter was marked for identification as Plaintiff's Exhibit No. 31.

Q. Miss Morrissey, I will hand you the letter marked as Plaintiff's Exhibit No. 31 and ask you if those are your initials down at the bottom of that letter?

A. They are.

Q. Would you state what the letter is?

A. The letter is asking for approval of war surplus materials for contract AF33(038) 16916.

Q. What is the date of the letter?

A. 10 November 1950.

Q. Who is it signed by?

A. By Mr. Adam Cappel.
Q. Are you familiar with Mr. Adam Cappel's signature?
A. I am.
Q. Can you state whether that is his signature?
A. It is, sir.

Mr. Aug: We would like to offer 31 in evidence, if the Court please.

The Court: It may be admitted.

Mr. Kelley: Just a moment, if your Honor please. If the Court please, on behalf of the defendants I should like to interpose an objection to the receipt of this exhibit in evidence, on the ground that it has not yet been established either by the testimony of any witness or by the instrument itself any connection between it and the transaction to which it refers and either of the defendants in this case.

The Court: I will overrule it at this time. If they don't make any connection before the case is through—

Mr. Aug: The witness has read from the letter. It says it is on contract 16916.

Mr. Kelley: The witness can't very well read from the exhibit until it gets into evidence.

Mr. Aug: Are you admitting this?

The Court: Yes.

Mr. Kelley: It is subject to our objection, that the government must connect it up.

Thereupon said letter was admitted into evidence and marked as Plaintiff's Exhibit No. 31.

Q. You have stated that you are familiar with the files?
A. Yes, sir.
Q. The government files of Cappel-MacDonald & Company, is that correct?
A. Yes, sir.

Q. And in the course of your duties there you were familiar with contract file 16916; is that correct?

A. Yes, sir.

Q. Have you ever seen this letter before?

A. I have.

Q. You prepared the letter?

A. I prepared the letter.

Q. Those are your initials, the initials "jm"?

A. Yes, sir.

Q. Did you know what contract it referred to?

A. Yes, sir.

Q. Can you state what contract it refers to?

A. AF33(038) 16916.

Mr. Aug: I would like to read this letter to the jury, if the Court please. This letter is on the letterhead of the Cappel-MacDonald & Company, Cappel Building, Dayton 1, Ohio. Packaging Division. The date is 10 November 1950. Addressed to "Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Dayton, Ohio. Re: War Surplus Materials, Contract AF33(038) 16916. Attention: Mr. Robert Hollifield, Survival Unit, Aero Med. Lab. Gentlemen:

"It is our intention to furnish surplus material, covered in Specification MIL-S-6216, Item No. 8, Compass, Magnetic, Pocket as originally manufactured by the Waltham Watch Company. A new compass can be furnished at the same price.

"We plan to furnish at surplus, in addition to the above, the following:

"Item No. 20, Goggle, Ski, Mountain, Type 1—Specification JAN-O-1134.

"Item No. 21, Headnet, Mosquito, M-1944, Specification PQD458.

"It is our belief that the above surplus is equal or better than material that can be procured at present, and it will expedite delivery to a considerable extent.

"Samples of each of the above, herewith, have been submitted.

"Very truly yours,

Cappel, MacDonald & Co.

(Signed) Adam Cappel, Vice President."

The initials "AC/jm" and the "jm" are your initials, is that correct, Miss Morrissey?

A. Yes, sir.

Q. Now, Miss Morrissey, I will ask you if you have in your possession a document called "contract change notice No. 2" relating to contract 16916?

A. I do.

Q. May I see it, please?

A. Yes, sir. (Produces)

Mr. Aug: Mark it 32.

The Court: Government's Exhibit 32 for identification.

Mr. Aug: That is correct, your Honor.

Mr. Kelley: If the Court please, defendants interpose the same objection to this document as to the one that preceded it, that it is in no way connected up with either of these defendants, but relates solely to a transaction between the government and Cappel-MacDonald & Company.

The Court: I will overrule the objection. It may be admitted in evidence, marked as Government's Exhibit 32 in evidence.

Thereupon contract change notification was admitted in evidence and marked as Plaintiff's Exhibit No. 32.

Q. Now Miss Morrissey, I will hand you Government's Exhibit No. 32. Can you tell the jury what that is, Miss Morrissey, the formal designation?

A. The formal designation, contract change notification.

Q. Is there anything in that change notification that pertains to goggles?

A. Yes, sir.

Q. And would you read what is in that exhibit as to the goggles?

A. Yes, sir. It says, "Item No. 20 MIL-S-6216 goggle, ski, mountain, Type 1, specification JAN-Q-1134. It is satisfactory for the contractor to furnish surplus goggles."

Q. Do you see the date, Miss Morrissey?

A. Yes, sir.

Q. Would you state what the date is?

A. 27 December 1950.

Q. Will you tell the jury where you got this?

A. I extracted this from my files.

Q. What file was it in?

A. In the contract file 16916.

Q. I will ask you, Miss Morrissey, if there is any reference to contract 16916 on that instrument?

A. Yes, sir. It designates the contract number AF33-(038) 16916.

Mr. Aug: Through with the witness, your Honor. That is all with the witness.

Cross-Examination, by Mr. Kelley.

Q. Miss Morrissey, counsel for the government sometime ago referred to you as secretary to Cappel-MacDonald & Company. You are not an officer of that corporation, are you?

A. No, sir.

Q. I don't wish this to be belittling in any way, but you are a typist-secretary, are you not?

A. Yes, sir.

Q. And hold no office in the corporation?

A. That is right, sir.

Q. Are you secretary, private secretary to any particular individual in the company?

A. At the present time I am private secretary to Mr. Ralph Cooper.

Q. Now as to the times we have been referring to back in 1950, from October, let us say, on through until December, were you private secretary to any one individual?

A. I was private secretary to Mr. Adam Cappel.

Q. And he is still living, isn't he?

A. Yes, sir.

Q. Where is he?

A. I don't know his whereabouts.

Q. When did you last see him?

A. I last saw him—I am sorry, sir. I can't recall the exact date, but it has been at least six months ago.

Mr. Aug: Your Honor, I don't quite get the line of the questioning here. I don't see what is pertinent about the whereabouts of Adam Cappel.

The Court: Go ahead. Counsel may inquire.

Q. Where is your office located in the Cappel building?

A. Where is my office located?

Q. Yes.

A. Fourth floor, Cappel Building.

Q. And it is your testimony that you haven't seen Mr. Adam Cappel in six months?

A. I haven't seen Mr. Cappel.

Q. Have you talked with him on the telephone?

A. Yes, I have.

Q. When did you last talk with him on the telephone?

A. I talked with him on the 'phone two weeks ago.

Q. Where was he when you had the 'phone conversation?

A. He didn't tell me.

Q. And you don't know to this moment?

A. No, I don't.

Q. Was it your understanding he was in the city?

A. Yes, it was.

Q. Who are the officers of this corporation?

A. Mr. E. F. MacDonald is the president. R. S. Bare is secretary. A. W. Clement is treasurer.

Q. Are all of those officers present in this city?

A. Yes, sir.

Q. Having reference to Government's Exhibit No. 10, that I believe you identified and it has been previously

identified as a contract between the United States government and the Cappel-MacDonald Company.

A. Yes, sir.

Q. Who was the contracting officer of Cappel-MacDonald Company who executed that contract?

A. Mr. Adam Cappel executed it as vice-president and Mr. Robert S. Bare certified it as secretary.

Q. Now you have no personal knowledge concerning the negotiations between the government and the Cappel-MacDonald Company which culminated in the contract, have you?

A. No, I haven't.

Q. I direct your attention to Government's Exhibit 30 in evidence, which has been identified as a request for proposal and counsel for the government directed your attention particularly to a sheet in this exhibit, and having observed it you testified that the name of a certain concern appearing theron in typewriter had been stricken out by a line being drawn through it; is that right?

A. Yes, sir.

Q. Now the line runs through several typed columns, does it not?

A. Yes, sir.

Q. What is it—what appears there in typewriter crossed out by a line in the first column?

A. What appears there?

Q. Yes.

A. Foster Grant Company, Leominster, Massachusetts.

Q. Immediately opposite that in the next column?

A. Goggles, ski, mountain.

Q. In the next column?

A. Quantity 14,200.

Q. In the next column?

A. Unit price $5.

Q. In the last column?

A. $71,000.

Q. Now all of those words that appear in typewriter that you just read have been stricken out by drawing a line through them?

A. Yes, sir.

Q. Now, would you turn to the last sheet of this character and I direct your attention to the bottom two typewritten lines. Read the first of those.

A. W. J. Opper, Chicago, Illinois.

Q. And the next column?

A. Goggles, ski, mountain.

Q. And the next column?

A. 14,200.

Q. And the next column?

A. $1.40.

Q. And the last column?

A. $19,880.

Q. That relates to the same article as the one stricken out?

A. Yes, sir.

Q. Now the total project in dollars, as to Opper is as you just read $19,880?

A. Yes, sir.

Q. And earlier the other supplier whose name is stricken out, the total is what?

A. $71,000.

Q. There is another typewritten line beneath the line where Mr. Opper's name appears, isn't there?

A. Yes, sir.

Q. That relates to whom?

A. B. T. Crump, Inc., Richmond, Virginia.

Q. And in relation to what items?

A. Axes, hand, Hudson Bay type.

Q. The last two typewritten lines on this sheet, the first one being the one you read, "William J. Opper, Chicago, Illinois, goggle, ski, mountain, 14,200, 1.40, $19,880," and the last which follows, "B. T. Crump Co., Inc., Richmond, Virginia," and so on, those appear to be in different typewriting than all the entries on that page which precede them?

A. Yes, sir. They are original.

Q. Whereas the other lines are carbon impressions?

A. Yes, sir.

Q. I don't recall whether you were asked: Did you personally cross off the lines that we have been talking about?

A. I didn't cross off the lines.

Q. Do you know who did?

A. No, I don't.

Q. I think you said you don't know any of the circumstances surrounding it?

A. No, I don't.

Q. Do you know who inserted in originally the name Opper on the last sheet that we have referred to?

A. I was told to do it.

Q. You did that?

A. Yes, sir.

Q. Who told you to do it?

A. Mr. Adam Cappel.

Q. Where were you when he told you that?

A. I was in my office.

Q. And on what day did he tell you to do that?

A. October 13, 1950.

Q. About what time of day was it?

A. In the middle of the afternoon.

Q. In the middle of the afternoon, on the 13th of October?

A. Yes.

Q. You knew then, didn't you, by 5 o'clock of that day the bids had to be in?

A. Yes, sir.

Q. Did you discuss or did you overhear any discussion by any of your employers, or any officers or employees of the company, the reason for striking out the one line and inserting Mr. Opper with his different price on the other?

A. No, sir, I did not.

Q. To this day you have no knowledge as to why that was done?

A. To this day I do. I know now.

Q. Only what someone has told you?

A. Only what someone has told me.

Q. But the person who directed you to do that was Mr. Adam Cappel?

A. Yes.

Q. And you spoke to him here in the city of Dayton a few days ago, or a short time ago?

A. Yes.

Q. Now, as to what has been marked Plaintiff's Exhibit 29 in evidence, the date on that letter is October 10, 1950?

A. Yes, sir.

Q. And I think that Mr. Aug read that to the Court and jury?

A. Yes, sir.

Q. When did you first see that letter?

A. I first saw the letter on October 10, 1950.

Q. Do you open the mail, incoming mail?

A. Yes, I do.

Q. Not for the entire company?

A. No.

Q. To what particular office was that directed, if you know?

A. It was directed to the government office.

Q. You are recalling now, remembering the envelope?

A. No, I don't.

Q. But you did secure that mail and you remember opening it?

A. I didn't open this. It was laid on my desk.

Q. It was laid on your desk the same date that appears on the letter?

A. Yes.

Q. At that time, when you first saw that, did you know who William J. Opper was?

A. No, I didn't.

Q. He was a complete stranger to your office, wasn't he?

A. Yes, sir.

Q. As a matter of fact, there was no acquaintance between Adam Cappel and Mr. Opper?

A. Not that I know of.

Q. Nor any other men of your organization?

A. That is right.

Q. Now reference is made there, I think, to a four-leaf clover.

A. A horseshoe.

Q. For Mr. Wayman's secretary. Who was Mr. Wayman's secretary?

A. Well, Mr. Wayman didn't have a secretary, but I do his secretarial work for him.

Q. So it would be a horseshoe to you, but you didn't know the gentleman?

A. I didn't know the gentleman.

Q. Had never seen him?

A. No, sir.

Q. Were you aware at or about this time that your company was undertaking to explore the mercantile field in order to secure various components that would go into the kits, if it were successful in getting the contract to produce the kit?

A. Did I—

Q. Were you aware that your company was busily engaged in trying to locate these components?

A. Yes, sir.

Q. And you were aware that this kit that your company was proposing to bid on consisted of many components, 40 or more?

A. Yes, sir.

Q. Do you remember what some of them were?

Mr. Aug: May I interpose an objection. I believe we are going far beyond the scope of the direct examination.

The Court: I will sustain it. She was the person has these in her file, many prepared herself. She received that letter. Do you have anything to do with formulating the policy of the company?

The Witness: No, sir.

The Court: Why, of course not. I will sustain the objection. If you want to call Mr. Cappel—

Q. Who does establish the policies of this company?
A. Mr. MacDonald and Mr. Bare.

Mr. Aug: Objection.

Mr. Kelley: I wish to learn who might be called to give us the facts, not the typist.

Mr. Aug: It is the same question.

The Court: I will sustain the objection. This lady was called here for these documents. They speak for themselves. You may inquire about what is on the document. That is all she knows about them, so she has testified. If you wish to call some of these officers in, Gentlemen, the clerk's office is right across the hall. All you have to do is issue a subpoena.

Mr. Kelley: If the Court please, defense is not now putting in its case. The government has brought this witness who is a typist. They have introduced these documents through her. I think it only fair to ask her who might know.

The Court: You may inquire, ask her what was going on out at Wright Field because she got these.

Mr. Kelley: I think we are entitled to proper cross-examination. However, the witness is responsible for these documents.

The Court: Yes, but your cross-examination, Gentlemen, must be responsive to what is brought out on direct examination. Now, later on, if you wish to do so, you can recall this lady, make her your witness and ask her anything you want, if it is competent, then the other side can cross-examine.

Mr. Kelley: I was thinking in terms of adequate cross-examination, which should be afforded where important documents are introduced with no one responsible to answer for them.

The Court: She is responsible for them. She said she brought them from their files they have today, the very numbers we are talking about, the contracts. You are asking the lady now to tell us all about the policy of the Cappel-MacDonald Company. She says she is not qualified to do that. I don't suppose she is, in her position.

Q. As to Government's Exhibit 31 in evidence, which has been identified as a letter taken by you in dictation, signed by Adam Cappel, directed to the Headquarters, which in substance requests approval for the contractor to supply war surplus material, the last line says, "Samples of each of the above herewith have been submitted". There is no indication at the lower left corner of any enclosure. Do you remember whether samples accompanied that letter?

A. I don't know.

Q. You ultimately did come to know Mr. William Opper, did you not?

A. Yes, I did.

Q. You didn't know him on the date, October 10th, when that letter came?

A. No, I didn't.

Q. When would you say you first saw Mr. Opper face to face?

A. I met Mr. Opper after October 10th, shortly thereafter it was.

Q. You met him after the bid was in, did you not, after the 13th of October?

A. Yes, sir.

Q. So it was some time subsequent to the 13th. Could you fix it more exactly than you have?

A. I don't recall. It was two years ago and I just don't recall the date.

Q. You do know you never saw him until after the 13th?

A. I didn't see him until after the 13th.

Mr. Kelley: That is all. Just a moment. (After conferring with co-counsel) That is all.

Redirect Examination, by Mr. Aug.

Q. Miss Morrissey, just one or two questions. You were asked when you first saw or got to know Mr. Opper, and you stated that you didn't know him on October 10th.

A. That is right.

Q. You didn't know him on October 13, 1950, but you met him shortly thereafter?

A. Yes, sir.

Q. Would that have been in the month of October 1950?

A. Yes, sir.

Q. You did know William J. Opper in October 1950?

A. Yes, sir.

Q. Do you see Mr. Opper in the court room?

A. Yes, sir.

Q. Will you identify him for us, please?

A. I will. That is Mr. Opper.

Q. Can you describe him, where he is seated?

Mr. Kelley: Stand up, please.

A. (After defendant Opper stood up) That is Mr. Opper.

Mr. Aug: Let the record show the witness has identified Mr. Opper in the court room.

The Court: The witness may go down and point Mr. Opper out.

The Witness (Leaves the witness stand): This is Mr. Opper. (Resumes the witness stand.)

Q. Then you knew Mr. Opper in October 1950, Miss Morrissey; is that correct?

A. Yes, sir.

Q. Now did you have occasion to see Mr. Opper from time to time after October of 1950?

A. Yes, sir.

Q. Did you see him frequently?

A. No, sir.

Q. But you did see him?

A. Yes, sir.

Q. And all of the times was this in Dayton, Ohio?

A. Yes, sir.

Q. And the meeting of October 1950 was that in Dayton, Ohio?

A. Yes, sir.

Q. You stated that you met Mr. Opper in October, 1950?

A. Yes, sir.

Q. And the first time you ever met Mr. Opper was in Dayton, Ohio; is that correct?

A. Yes, sir.

Mr. Aug: No further redirect.

Mr. Kelley: There is some recross, please.

Recross-Examination, by Mr. Kelley.

Mr. Kelley: Your Honor, I overlooked before taking up an item. This is not strictly recross. However, I ask your indulgence. I overlooked one matter.

The Court: Certainly.

Q. I direct your attention once more to Government's Exhibit 10, which you identified as contract 16916 between the government and Cappel-MacDonald Company.

The Court: Government's Exhibit No. 10.

Mr. Kelley: Yes, your honor.

Q. (Continued) That contract was canceled, was it not?

A. Yes, sir, it was canceled.

Q. When?

A. In 1951.

Q. Had deliveries been made to the government in that contract before it was canceled?

A. Yes, sir.

Q. As to those deliveries that were made to the government in that contract before it was canceled, each kit included ski goggles supplied by William J. Opper to your company, did they not?

A. Yes, sir.

Q. Your company bought them from Mr. Opper?

A. Yes, sir.

Q. And you bought them as war surplus material?

A. I don't know, sir.

Q. You don't know that?

A. No.

Q. Having reference to Plaintiff's Exhibit 31, the letter which you took in dictation, signed by Mr. Cappel, addressed to Headquarters, that includes in its context Item 20, goggle, ski, mountain. Type 1, specification JAN-G-1134, does it not?

A. Yes, sir.

Q. And the first line of this letter which you took in dictation reads, "It is our intention to furnish surplus material", does it not?

A. Yes, sir.

Q. And in its caption and reference, it says, "War Surplus Materials", does it not?

A. Yes.

Q. Followed by "Contract 16916"?

A. Yes.

Q. And the only goggles you ever supplied were goggles obtained from Mr. Opper, weren't they?

A. Yes, sir.

Mr. Kelley: That is all.

Mr. Aug: We are through with the witness, your Honor.

The Court: That is all, Miss Morrissey.

Mr. Aug: Now your Honor, may we request a five-minute recess?

The Court: Yes. Take a little recess.

Thereupon a short recess was had.

And thereupon

ROBERT L. HOOVER, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. State your name.
A. Robert L. Hoover.
Q. H-o-o-v-e-r (spells)?
A. That is right.
Q. Where do you live?
A. 1121 Kammer avenue.
Q. Is that in Dayton, Ohio?
A. Dayton, Ohio.
Q. Where are you employed?
A. Cappel-MacDonald & Company.
Q. How long have you been employed there?
A. About eleven years.
Q. And what is your position with the Cappel-MacDonald Company?
A. Purchasing agent.
Q. You are the purchasing agent. In the performance of those duties, do you have custody of the purchase files?
A. Yes, sir.
Q. I will ask you if you have in your possession purchase orders relating to the purchase of goggles from Mr. William J. Opper?
A. Yes, sir.
Q. Will you show them to me please?
A. (Does as requested by counsel.)

Mr. Aug: Mark these for identification 33, 34 and 35, purchase orders of Cappel-MacDonald.

Thereupon three purchase orders of Cappel-MacDonald were marked for identification as Plaintiff's Exhibits Nos. 33, 34 and 35, respectively.

Q. Mr. Hoover, I will hand you Government's Exhibit marked for identification as No. 22 and ask you to identify that instrument and state what it is, please?

A. It is a contingent order for 14,200 goggles, ski, mountain, Type 1, specification JAN-G-1134.

Q. And to whom is it addressed?

A. To W. J. Opper, 230 East Ohio street, Chicago, Illinois.

Q. You have taken that from your files; is that correct?

A. I have.

Mr. Aug: We would like to offer this purchase order marked Exhibit 33 into evidence, if the Court please.

Mr. Kelley: No objection.

The Court: It may be admitted.

Mr. Aug: I would like to read this to the jury.

Thereupon said purchase order of Cappel-MacDonald Co. was admitted into evidence and marked as Plaintiff's Exhibit No. 33.

Mr. Aug: (Reads) It is a purchase order, Cappel-MacDonald and Company, Dayton 1, Ohio. It is dated November 7, 1950, addressed to W. J. Opper, 230 East Ohio Street, Chicago, Illinois. Please ship the following order: 14,200 Goggle, Ski, Mountain, Type 1 per Spec. JAN-G-1134, $1.40 each. Subject to source approval, and our receiving the formal contract for 14,200 Type E-1 Kits, or merchandise may be returned for full credit. Ship to c/o Otterbein Press, 252-254 W. Fifth Street, Dayton, Ohio. Delivery Perry Street side."

Q. I will hand you an instrument marked as Plaintiff's Exhibit No. 34 for identification and ask you to state what that is.

A. It is a purchase order covering 14,200 or 71 cases of goggles, ski, mountain, Type 1, per Spec. JAN-G-1134.

Q. Who is the order addressed to?

A. W. J. Opper, 1250 Stone street, Chicago 10, Illinois.

Q. Is there any reference in that instrument as to a contract number?

A. Yes, sir. It is for contract AF33(038) 16916.

Mr. Aug: Like to offer Government's Exhibit marked for identification as No. 34 in evidence, if the Court please.

Mr. Kelley: No objection.

The Court: It may be admitted.

Thereupon said purchase order of Cappel-MacDonald Co. was admitted into evidence and marked as Plaintiff's Exhibit No. 34.

Mr. Aug: I would like to read this to the jury. It is purchase order, Cappel-MacDonald and Company, Dayton 1, Ohio. Order No. G 1059. To W. J. Opper, 1250 Stone Street, Chicago 10, Illinois. Date, December 4, 1950. "Please ship the following order: 14,200 (71 cases) Goggle, Ski, Mountain, Type 1, per Spec. JAN-G-1134. Unit price $1.40, $19,880 in the column labeled 'Extension'. Acceptance of this order contingent upon the conditions set forth in Exhibit A. For contract AF33(038) 16916—D0-09 Certified under NPA Regulation No. 2. 3 Samples to be sent to us for: First article approval for Wright Field, Experimental Packaging by us, approval and return to you as a prototype. Increased option clause of 50% to be exercised not later than March 13, 1951. Above price is firm on delivery of this order. Delivery, immediate. Ship via Consolidated Freightways from Seattle, Washington. Terms net."

Q. I will hand you Plaintiff's Exhibit marked No. 35 for identification and ask you to state what that is?

A. It is purchase order issued to William Opper, 1250 Stone street, in Chicago, for 10,310 goggles, ski, at $1.75 each.

Q. Is there a reference to a contract number in that purchase order?

A. Contract AF33(038) 26634.

Mr. Aug: We would like to offer Government's Exhibit 35 in evidence, if the Court please.

The Court: It may be admitted.

Thereupon said purchase order of Cappel-MacDonald Company was admitted into evidence and marked as Plaintiff's Exhibit No. 35.

Mr. Aug: This is purchase order, Cappel-MacDonald and Company, Dayton 1, Ohio. "To William Opper, 1250 Stone street, Chicago, Illinois. Order No. G 1688. Date August 31, 1951. Quantity 10,310 Goggles, ski. Unit price $1.75 each. Extension $18,042.50. Contract AF33(038) 26634—DO 21 Certified under NPA Regulations. Acceptance of this order contingent upon conditions set forth in Exhibit attached. Commercial packing acceptable to common carrier, uniform quantities to shipping container. Packing list to accompany each shipment. Delivery: As soon as possible. Ship to: Cappel-MacDonald & Co., 252 W. Fifth Street (Perry Street side), Dayton, Ohio. Ship via F. O. B. Factory. Terms net."

Q. Mr. Hoover, were these all of the goggles which were ordered by Cappel-MacDonald & Company from William J. Opper?

A. They were all that were ordered for a specific contract.

Q. And the contracts are referred to in the purchase order?

A. That is right.

Q. Now, were these goggles furnished by William J. Opper?

A. One purchase order was completed. The other one was partially completed.

Q. I will hand you three government exhibits which have just been introduced into evidence and ask you which of those were completed and which partially completed?

A. This particular order was completed. That is Plaintiff's 34 exhibit.

Q. Plaintiff's Exhibit—

A. 34.

Q. Was completed. Which one was partially completed?

A. Exhibit 35.

Q. So that you are stating there has been complete delivery under the one purchase order and partial under the other?

A. That is right.

Q. Now, after Cappel-MacDonald got these goggles from Opper, they were assembled in a survival kit; is that correct?

A. That is right.

Q. Three to the kit after it was assembled?

A. Kits when they were assembled were prepared for shipment and shipment made to government destination.

Q. And included in the kit was this goggle which you had ordered from Opper?

A. That is right.

Q. Do you know how many survival kits have been furnished under this contract to the government?

A. At the time our contracts were terminated we had shipped 13,849.

Q. Were there goggles in each of those kits?

A. That is right.

Q. Were those the goggles you obtained from William J. Opper?

A. Yes, sir.

Mr. Aug: No further questions.

Cross-Examination, by Mr. Kelley.

Q. Mr. Hoover, did you bring any of your files in relation to these invoices with you today?

A. I have some, yes.

Q. Are you an officer of the Cappel-MacDonald Company?

A. No, I am not.

Q. You had nothing to do with the execution of the contract?

A. No, sir.

Q. Nor the negotiations leading up to the contract?

A. No, sir.

Q. When did you first meet William Opper?

A. I would say sometime between possibly the 1st of November to the 15th of November.

Q. Of 1950?

A. 1950.

Q. Did you issue all of the purchase orders as to which you have testified this morning?

A. No, I didn't.

Q. Who did?

A. Mr. Adam Cappel issued one order and I issued the other two.

Q. Which one did Adam Cappel issue?

A. What we call the "contingent" order.

Q. That was the one that has been marked here as Government's Exhibit 32?

A. I am not sure. I would have to see it. (After looking at Plaintiff's Exhibit 33:) That is the one Mr. Cappel issued.

Q. That is dated when?

A. November 7, 1950.

Q. What does it say down here in the middle?

A. "Subject to source approval, and our receiving the formal contract for 14,200 Type E-1 kits, or merchandise may be returned for full credit."

Q. Now then, in part, it says, "Subject to our receiving formal contract." And it is dated November 7th. The witness who preceded you to the stand, who undertook to identify a contract by its date, testified to this Court and jury that the contract in question was executed on October 30th. In that case you had already gotten the contract before you issued an invoice reciting "Subject to our receiving the contract", hadn't you?

A. Perhaps we had received an advance copy but the signed contract had not been received to my knowledge at that time.

Q. But you do not issue purchase orders except in accordance with a contract, do you?

A. That is right.

Q. Would you look at Government's Exhibit 10 and let us clear up the question of when it came into existence.

The Court: Doesn't the contract speak for itself?

Mr. Aug: It speaks for itself.

Mr. Kelley: The government brought a witness and he said—

The Court: The contract speaks for itself. You don't need to answer that question. He is called here with regard to these purchase orders and we are not going into a lot of ramifications of a man who doesn't know anything about it or wasn't asked about it. If there is any dispute about that date you and counsel for the government may dispute it out later on. At this time you don't need to answer the question. He was not called for that purpose.

Mr. Kelley: If your Honor please, he has identified and through him there has been introduced an invoice here dated November 7th and on this—a purchase order, I should say, which by its terms recites it is subject to receiving a contract. Now, as your Honor says, the contract is in evidence and it will speak for itself.

Q. So, Witness, I show you this contract and ask you to refresh yourself as to its date and answer whether or not you had a contract on the date you issued this purchase order, Plaintiff's Exhibit 33?

Mr. Aug: Now, the Court has made a ruling. The Court has overruled that type of question.

The Court: Do you object to it?

Mr. Aug: Yes, sir.

The Court: I will sustain the objection. You don't need to go into that. He isn't called as an expert.

Mr. Kelley: He introduced and identified it.

The Court: No. He hasn't identified anything but the purchase order.

Mr. Keiley: That is what I am talking about.

The Court: I know, but you are asking him now about this contract. He wasn't asked anything about the contract, and he isn't here to tell us what the other witness testified to.

Mr. Kelley: I am inquiring as to the authenticity of the thing he had and produced. If your Honor will look at it you will see the statement is made it is "subject to their getting the contract." I submit I should be able to show they already had it. Therefore, the subject is meaningless.

The Court: Of course, you can, but you can't do it on the cross-examination of this witness. If you wish to call Mr. Hoover later on, you may do so, but right now you cannot cross-examine him about something—You didn't have anything to do with the making of that contract, did you?

The Witness: No, sir.

Mr. Kelley: But he had to do with the making of this invoice, if your Honor please.

The Court: You mean to say he did not make that out?

Mr. Kelley: I mean to say that there is the statement in the invoice which he made which is contrary to the facts. I wish to demonstrate it.

The Court: You may argue that to the jury, if you wish.

Mr. Kelley: I wish to demonstrate it to the jury before I can argue it to them, sir.

The Court: Instruments speak for themselves. Suppose this Gentleman said the date of that was 1948. That doesn't change the date any. The date is on there. If he had anything to do with it, if he drew that contract or was called here about it, yes.

Mr. Kelley: May I make a statement for the record, at the Bench, to show the relevancy and materiality of this inquiry?

The Court: You may put anything in the record you wish, but I will sustain the objection.

(Out of the hearing of the jury):

Mr. Kelley: May the Court please, the witness now on the stand, Mr. Hoover, identified Government's Exhibit 33 and has testified that it is a purchase order issued by the Cappel-MacDonald Company under date of November 7, 1950. This instrument was read to the jury in its entirety and it reads in part "Subject to source approval and our receiving formal contract." There has been introduced by the government, by the previous witness, testimony that the formal contract was dated October 30th. The contract itself received in evidence over the objection of defendants recites the date of October 30th. It is thus evidence that the clause "subject to our receiving the formal contract" which appears in Plaintiff's Exhibit 33 is not in fact a true statement and its effect upon the jury, having been read to the jury, would be to infer a motive on the part of Opper to see that the goggle in question was approved, because his sale was contingent. For that reason we feel it is relevant, material and properly within the scope of our cross-examination.

The Court: The whole question is argumentative, has nothing to do with what this witness has testified to on his direct examination. Counsel may call this witness when they come to the defense and put him on as their witness, if they wish. But as part of the cross-examination, I hold it is highly objectionable and I sustain the objection.

(In the hearing of the jury):

Q. Mr. Hoover, there has been received in evidence and read to the jury Plaintiff's Exhibit 33, which calls for

14,200 goggles, ski, mountain, Type 1. You have testified that that was issued, that purchase order was issued by your company.

A. That is right.

Q. The next exhibit, Plaintiff's 34, called for 14,200 goggles, does it not?

A. It does.

Q. And you were asked on direct examination whether the items covered by these invoices were delivered and you said they were. The fact is, is it not, that one of those invoices is merely a duplicate of the other?

A. I stated that this invoice had been—or this order had been shipped complete. No mention was made of this order.

The Court: What is the exhibit number?

The Witness: Exhibit 33. We received no shipments against that purchase order. Exhibit 34 was shipped complete.

Q. Until this moment you had not made that point clear.

A. I thought I had. I am sorry.

Q. So that all that was received by you and actually purchased by you under Exhibits 33 and 34 were 14,200 items, not 28,400 items?

A. That is right, 14,200 goggles.

Q. And your company requested cancellation of the first invoice, Exhibit 33, did you not?

A. That is right.

Q. Do you have with you the letter in which you requested it be canceled and ignored?

A. I will see if I have it with me. I do have.

Q. May I see it?

A. (Witness produces letter.)

The Court: Have it marked for identification, please, as Defendants' Exhibit C.

Thereupon said letter was marked for identification as Defendants' Exhibit C.

Mr. Aug: We have no objection to that letter.

Mr. Kelley: I am merely identifying it at this stage of the trial. I am not offering it.

Q. I show you what has been marked for identification Defendants' Exhibit C. Can you identify it?

A. Yes, sir.

Q. What is it?

A. It is a letter to W. J. Opper, 230 East Ohio street, Chicago 10. Shall I read the letter?

Q. No. Does it relate to any of the invoices as to which you have testified?

A. It relates to the purchase orders.

Q. Purchase order I meant to say.

A. To which I have testified, it relates to purchase orders G-1059, G-1058, G-1060, as superceding F-5505-G, F-5506-G, F-5507-G.

Q. And did it serve to cancel the purchase order marked Plaintiff's Exhibit 33 and to substitute in its place purchase order Government's Exhibit 34?

A. That is right.

Q. Government's Exhibit 33 recites in part, does it not, as read, that "subject to source approval"?

A. That is right.

Q. Do you have within your papers source approval as to William J. Opper obtained from the government?

A. I have such a letter in our files.

Q. You don't have it here?

A. Don't have it with me.

Mr. Kelley: Mark it D and D-1.

Thereupon a document consisting of two pages was marked for identification as Defendants' Exhibit D and D-1.

Q. Mr. Hoover, I show you what has been marked for identification as D and D-1 and ask whether you can identify that?

A. This appears to be a copy of—

Mr. Aug: May we see this?

Mr. Kelley: Oh, I beg pardon.

Q. Mr. Hoover, can you identify documents D and D-1? Just state whether you can or not.

A. It appears to be a copy—

The Court: A photostatic copy.

A. (Continued) —a photostatic copy of a letter approving—

Q. A letter, photostat of the original you have in your files that you referred to a moment ago?

A. I don't know.

The Court: Can you at the noon hour get your files and bring back the original letter and compare it with that?

The Witness: Yes, sir.

Mr. Kelley: May we suspend then?

The Court: Yes, sir. Now, Members of the Jury, we are about to recess the hearing of this cause until 2 o'clock this afternoon. During this interval bear in mind my usual admonition. Return, if you please, at 2 o'clock this afternoon.

Adjourn court until 2 o'clock this afternoon.

Thereupon the further proceedings in the trial of this cause were adjourned until 2 o'clock of the afternoon of the same day.

Afternoon Session.

Thursday, May 15, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

ROBERT L. HOOVER resumed the witness stand and testified further on **cross-examination** as follows:

By Mr. Kelley:

Q. Mr. Hoover, have you had an opportunity during the recess period to examine your records to determine whether you have found therein the document, of which Defendants' Exhibit D and D-1 is a photostatic copy?

A. Not a true photostat of the document in our file.

Q. You say it is not?

A. No sir, it is not.

Q. Do you have the document in your file?

A. I do.

Q. May I see it, please?

A. (Witness produces document.)

Q. In what respects do they differ?

A. There is a pen note on the top of our document that does not appear on the photostat and there is a note or a writing at the bottom of the photostat that does not appear on our document.

Q. And other than for those two points of discrepancy, are they identical.

A. They are.

Q. Is the typewritten material identical?

A. Yes, sir.

Q. Having reference to Defendants' Exhibits D and D-1, it is dated when?

A. December 5, 1950.

Q. And is directed to whom?

A. To Cappel-MacDonald and Company, 127 South Ludlow street, Dayton 1, Ohio.

Q. And is in reference to what subject?

A. "Subject: Sub-contracts Approved under Prime Contract No. AF33(038) 16916."

Q. Who issued that source approval, that document?

A. That was issued by the—There is no statement on your copies. It is a typewritten signature at the end "Harry A. Chance, 1st Lt., USAF, Contracting Officer."

Q. And it does by its terms relate to the matter of approving source, the source being whom?

A. W. J. Opper, 1250 Stone street, Chicago 10, Illinois.

Q. And does it relate to source as respects a purchase order, one of the purchase orders issued by your company and marked in evidence today?

A. It does.

Mr. Kelley: That is all.

Redirect Examination, by Mr. Aug.

Q. Mr. Hoover, you are using the term—I don't think we are all familiar with it. What do you mean by "approving the source"?

A. Under the terms of our contract, all sub-contractors must be approved before an order can be mailed to them.

Q. And this instrument purports to be an approval of a subcontract; is that correct?

A. Of a sub-contractor.

Q. The approval of a sub-contractor; is that correct?

A. Right.

Q. Is there anything in this instrument that approves the article that the sub-contractor is supplying?

A. No, there is not.

Mr. Aug: No further question.

Mr. Kelley: That is all.

The Court: I think you ought to have that marked for identification, if you are going to have a photostatic copy. Here is the original signed by the man that sent it.

Mr. Kelley: It hasn't been offered.

Mr. Aug: It hasn't been offered. It is his document.

The Court: Just mark that the Court's Exhibit No. X for identification. Sometime we might reach the stage where that would be offered. It seems to me if you have the original document, why have a photostat, unless counsel want the photostat.

Thereupon said document was marked for identification as Court's Exhibit X.

Mr. Aug: We had nothing to do with the presentation of it.

Mr. Kelley: We did not issue a subpoena for it and I am not empowered to demand of the man that he give me his document.

The Court: All right. We have it marked now as X. That is the unknown quantity anyhow.

Mr. Aug: That is all.

MR. MONCURE NOBLE, being duly sworn, testified as follows:

Direct Examination, by Mr. Richter.

Q. Will you state your full name please to the Court and the jury?

A. Moncure Noble.

Q. How do you spell your first name?

A. M-o-n-c-u-r-e (spells).

Q. Where do you live?

A. 102 South Central avenue, Fairborn, Ohio.

Q. What is your occupation?

A. I am a special agent in the Procurement Section of the Office of Special Investigation, Inspector General, Air Force.

Q. How long have you been engaged in that activity?

A. Since the 2nd of July 1951.

Q. Have you ever met the defendant Robert Hollifield in this case?

A. Yes, sir, I have met Mr. Hollifield.

Q. Can you point him out in the room here?

A. Yes. That is Mr. Hollifield over there.

Q. Will you step down here and put your hand on his shoulder?

A. Yes. (Witness does as requested by counsel) This is Mr. Hollifield.

Mr. Richter: Let the record show he points to Mr. Hollifield.

Q. Now, Mr. Noble, have you ever had any conversation with Mr. Hollifield?

A. Yes, sir. It was on the 27th—26th of September 1951.

Q. Where was that conversation?

A. That was in the office of the O. S. I. out at the Air Base.

Q. Who was present?

A. Myself, Special Agent Lawrence Collins and Mr. Hollifield.

Q. What time of day was it?

A. That was at 9, 9:30 in the morning.

Q. Will you relate to the Court and the Jury the preliminary discussion that you had with Mr. Hollifield on that occasion?

Mr. Kelley: Just a moment. May we approach the Bench?

The Court: No. Now, Members of the Jury, you may step in the other room.

Thereupon the jury retired to the jury room and the following proceedings were had in the absence of the jury:

The Court: Now, Gentlemen, we might just as well hear all of these matters now and we will get them out of the road in the absence of the jury, so there won't be any question about it.

Mr. Richter: May it please the Court, I might suggest, subject to the Court's approval, that there are two prob-

lems we have here, first, when the confessions may be introduced; second, whether or not they may be introduced. The Court had suggested that we should go into all of these matters at this time.

The Court: I was trying to do that so we won't have the jury running back and forth every few minutes and we can talk better. We have it in the record in the absence of the jury and I can hear what counsel have to say on both sides, of course.

Mr. Richter: Now, if the Court please, the thought I had is simply this, that the relation to the second point as to whether these confessions are going to be admissible at all. It might be possible to handle that at the conclusion of the trial.

Now, we have in the Adolfson case authority for the introduction of confessions at any time during the course of the proceeding and I merely suggest to counsel and the Court if we limited the discussion, at this time to the question of when the confessions may be introduced, perhaps we could proceed and get the trial over with and argue the admissibility in the light of all of the evidence at the conclusion. That is merely a suggestion for counsel and the Court.

Mr. Kelley: While counsel has stated to your Honor one authority, he hasn't cited it. I assume your Honor must be familiar with it. But on the other hand the government takes this position, that the matter of when an inculpatory oral admission or an inculpatory written statement may be introduced as to either of these defendants is a matter governed by law, the time when it may properly be introduced.

We have decisions which we respectfully wish your Honor would consider and consider all the decisions bearing on this very crucial question before undertaking to rule upon it. Surely I wouldn't have to dwell at length upon the significance of permitting, without inquiry into their proper foundation, permitting these statements to go

into the record now and then to wait until the last moment, when the government is to close and then find out whether they ought to have gone in or not. Common reason suggests that one would pause before adopting such a rule where in a criminal case people's liberty is at jeopardy.

If there is to be an order of proof suggested to be worked out, we ask the government go forward with its proof to the point where it feels it can demonstrate that the elements constituting corpus delecti in this case have been established in this case where it would warrant the production of a confession.

If that matter must be determined now and if the government is presently intending to offer in evidence such statements, we would like to be heard at some length; we would like to be able to hand up to your Honor, let us say by tomorrow morning, upon which we could work tonight, having in mind now just what evidence is before your Honor, we would like to hand up a memorandum citing authorities. We do not want to delay, but we do think this is a very crucial point in the case and want to submit to your Honor every authority at our command so you may have that in passing judgment. We could have such a memorandum ready and in writing tomorrow morning, but we should like to hand up our written brief on this subject.

Mr. Richter: We don't mean to preclude any preliminary examination of the witness. I want to make that clear.

Mr. Kelley: If the Court please, I would like to ask for a continuance until tomorrow morning so I could prepare a statement. Could I have a continuance until tomorrow morning in which to answer Mr. Richter?

Mr. Richter: If the Court please,—

Mr. Kelley: If the Court please, there is a question as to the nature, whether it is a voluntary statement that is to be made, or whether it is a written confession.

Mr. Richter: We are advised that counsel has seen this statement and I don't know why it should be necessary to adjourn until tomorrow morning on this.

Mr. Kelley: I can only say what I said before, from my point I do wish to hand up some written form of decision so your Honor will have a chance to consider this law at leisure and deliberately.

The Court: Now, Gentlemen this matter came up in sort of an oblique way on a motion, as you recall. Now, if counsel for the defendants feel that they would like to have a little time, particularly where they think they have some law they can give to the Court, of course, I want to give them that opportunity, because if there is anything that I am lacking in, it is in a knowledge of the law. I would like to get all the law I can on the subject from both sides, so that I won't do things too quickly and then have to reverse myself or regret about it afterwards.

Now I would like to get it straightened out. That is the reason I excused the jury. I presume it will all come under some objection of some kind technically and I am going to waive the technicalities, if we can for a moment, and I would like to hear from counsel. I don't mean now. Say tomorrow on your arguments as to whether or not anything was said to this gentleman or to the other gentleman—

There was another gentleman with you, was there not?

The Witness: Yes, sir.

The Court: —or to the other gentleman with him, either verbally or in writing.

Now, first, the question is whether there is anything at all there that is competent. I understand the question of res gestae enters into the matter to some extent and, of course, I will have to caution the jury very carefully if I should let any of this in as to what their duties will be, to keep this in their mind, too.

I think it would be better to give counsel an opportunity until, say, tomorrow.

Now, Gentlemen, on Monday, as counsel know, I have another matter coming up and I have talked with counsel and you all—I have been advised on both sides it is quite satisfactory that we adjourn over Monday until Tuesday. That is correct, is it not?

Mr. Kelley: Yes, sir.

Mr. Richter: Yes, sir.

The Court: Well, now tomorrow I am only going to have one session anyhow, so as to let you Gentlemen from out-of-town have a chance to get home, and your clients, too. I thought we could run from 11 until 2 and then we will adjourn. I know we can do that without any trouble, if we don't have the jury in. I don't see much point in bringing the jury back here just to run them out and let them sit there in the other room. I think it is best to excuse the jury until Tuesday morning. Then I would like to have counsel tomorrow present by way of oral argument, if you wish to be heard, as well as your memorandums, so I could have the memorandum now over the week-end, including Monday and then when I start in Tuesday morning, I will try to be ready to rule on the matter. But I would like to be able to rule on everything so we won't have to take it up piecemeal. I mean by that as to whether any of these so-called confessions, if there are such, or conversations, whatever you want to call them, whether they are admissible at all and if so, whether admissible now, anything of that kind that you care to touch on.

Mr. Richter: If the Court please, would that give each side an opportunity to read the brief of the other and submit a reply, or will we just each submit our memorandum?

The Court: Well, there is no objection to your having the opportunity, if you get it into each others hands in time to do that by tomorrow. Can you do that? Monday I won't have any opportunity, because I will be busy otherwise. What would your suggestion be?

Mr. Richter: If your Honor please, I don't know frankly. It looks as though what we might have to do would be to exchange memorandums or else argue it orally and each present what they think the law to be.

The Court: Of course, we can't file briefs like we do in the ordinary case. We have fourteen jurors here.

Mr. Kelley: If I may just bring this up now, in view of what your Honor said about wishing to dispose of all these legal questions at this sitting, in which, of course, I concur, but we might consider this, depending upon how your Honor will rule on question No. 1, that is to say, whether these inculpatory statements, either written or oral, are admissible at this time, should your Honor rule that they are, it would then follow that we would wish to move for severance at that time. We couldn't make the motion all at once. It depends on your Honor's ruling. We are prepared to argue all points of law at one time. There would be no purpose should your Honor rule at this time, on this state of the record, they are not admissible, then there would be no occasion for us to argue the motion for severance.

The Court: I don't want to cut you off from your opportunity to be heard on both sides, because you are entitled to that.

Mr. Kelley: We should like to be heard orally tomorrow, if the Court will hear us, upon this question of whether or not, upon the present state of the record there has been sufficient proof of corpus delicti and all of its elements to permit introduction of inculpatory statements and we should like to hand up to your Honor a written memorandum that you could have to consider over the week-end in resolving this problem. We could at the same time state our position on the matter of severance.

The Court: I think it would be well to do that.

Mr. Kelley: We can do both.

The Court: The only thing where a day or two makes some difference is on account of our jurors. If it were tried to me personally, I wouldn't care how long it would take, but there are fourteen jurors here.

Well, I think Mr. Kelley's suggestion is a good one. Come tomorrow prepared to argue, first, which I think is the first question, of course, whether or not this is a proper time or whether the state of the record is in such shape as at this time to permit the introduction of these so-called conversations or documents, whatever it may be.

Now, that has to do, in my opinion, somewhat with whether there has been enough of the res gestae to justify the admission of these conversations at this time.

Without assuming anything that means anything at this time, let us assume—I don't want it to mean anything more than just a pure assumption—let us assume that the Court will hold, Yes, this is all right at this time to go ahead. Then why can't you be prepared in the alternative to argue that? It may take a little of your extra time, but still I would get the chance, it seems to me, to solve the whole problem at one time, if I have to. Do you think that is a good program or not?

Mr. Richter: We will agree to that.

The Court: Mr. Aug and Mr. Richter?

Mr. Richter: We will agree to that.

The Court: Mr. Ruffin?

Mr. Ruffin: Yes, sir.

The Court: Well, I think that is a sensible thing to do and would suit you. How long would you like to argue this?

Mr. Kelley: On the first question, Judge, that is as to whether or not this is the proper time—we might not take that much time, but if we could be allowed an hour to a defendant. Certainly we wouldn't take more than that and

I doubt quite that, since we are handing up our written memoranda, too.

The Court: I wouldn't object to that.

Mr. Richter: Provided we are given the same privilege, which I presume we will be, we have no objection to that.

The Court: Sure, whatever goes for one side goes for the other, in this case. I really think the sensible thing to do then is to excuse the jury and adjourn the case until tomorrow morning and then I will hear from counsel.

Mr. Kelley: And the jury will be excused until Tuesday morning.

The Court: I will excuse the jury now until Tuesday morning. No use for them to come back tomorrow. We will just run them in and out. Makes them tired and causes a lot of expense, without doing any good. I think it is a very serious question that the Court must give some consideration to. Can't go on without having at least some little knowledge, at least, of what counsel have to say about it. Suppose we do that.

Have the jury come in now and I will excuse them and I will adjourn court then, when we do adjourn, until 11 o'clock on Tuesday. All right, bring in the jury.

Thereupon the jury returned into the court room and the following proceedings were had in the presence of the jury:

The Court: Now, Members of the Jury, there are some questions of law that have come up and will come up that are going to take a little time for counsel to present and it is going to take me a little time to determine. So, we have agreed, with your approval, that we will recess now the further hearing of this cause now as of today, then you don't need to return until 11 o'clock on Tuesday morning of next week. That will be May 20th. That will give counsel and the Court an opportunity to go into these

matters and give me their thought upon their part and the consideration upon my part which I feel they deserve.

Now, during this rather long interval, I am sorry we have to be separated so long in the matter, but during this rather long interval, of course, we have the week-end anyhow, there would be a couple of days in there, Saturday and Sunday, we won't be out entirely—the trouble of it is they are going to make me work on Saturday and Sunday. At least, that is what they are threatening now, unless I get the C. I. O. or something after them. Be that all as it may, I am just joking. During this interval, please bear in mind my admonition: Do not permit anybody to talk to you about this case. If anybody even approaches you, wants to talk about this case while it is in progress, you must report that fact immediately to the Court. Don't discuss it among yourselves. I don't know, some of you may come from the same neighborhood, if so and you go home together and come back together, talk about anything as long as you don't talk about this case, and don't talk about it at home.

Now, don't forget what you have already heard, because that, of course, you are supposed to remember. You will have your memories refreshed by counsel later on in their arguments and all that, but please be very careful, because we have been some little time in the trial of this case, and you know you wouldn't want and I wouldn't want anything to happen, by any mischance interfere with its conclusion.

Now, Members of the Jury, you may be excused and return here, if you please, on Tuesday morning of next week, May 20th, at 11 o'clock. Counsel will remain just a second.

Thereupon the jury retired from the court room and the further proceedings were had out of the presence of the jury.

The Court: I have nothing further to take up, but I thought you may have and I thought I would give you the opportunity.

Mr. Richter: If the Court please, what time are we to meet tomorrow morning?

The Court: 11 o'clock tomorrow morning. We will adjourn court then. We will adjourn our court until 11 o'clock tomorrow morning, but the jury won't be back until Tuesday morning.

Thereupon court was adjourned until 11 o'clock tomorrow morning.

Morning Session.

Friday, May 16, 1952.

Court met pursuant to adjournment. Counsel being present as heretofore noted, the following proceedings were had in the absence of the jury:

The Court: Are counsel ready to proceed?

Mr. Kelley: Yes, your Honor. May it please the court, I assume that the defendants have the burden of proceeding with this argument since we interposed an objection to an item of evidence offered yesterday and we paused at that stage so that the Court would hear the basis for our objection. I wish to hand up to your Honor a written memorandum—

The Court: If you please. Thank you.

Mr. Kelley: —which I think fully outlines our position and my remarks now in large measure would merely be repetitious of what we have put in our brief. Therefore, I will not take very much time but would like merely to outline generally the structure of our brief, what we think the issues are and to refer generally to the nature of the authorities that we cite in support of our contention. I have just a few moments ago furnished the government with copies of this memorandum.

As a preliminary statement, it should be said that at this stage of the trial and as of yesterday afternoon, the govern-

ment undertook to elicit through the testimony of a special agent of the O. S. I. the substance of certain conversations had between that agent and the defendant Hollifield. We are informed and believe that as the trial would progress further it will be the intention of the government also to introduce through other special agents of either the O. S. I. or F. B. I. or both, the substance of oral conversations of a similar character had at other times and in addition to that possibly written sworn statements of an inculpatory nature.

It is further understood that as the trial progresses that the government will seek to introduce conversations in which inculpatory admissions were made by the defendant Opper and likewise a written document purporting to constitute inculpatory admissions.

Now, we are concededly anticipating considerably what may occur and yet I think it was the understanding of the Court yesterday and counsel for both sides, that a great purpose would be served in anticipating what is probable so that we could at this time cover several points of law that inevitably must arise, and thus save time all around and give the Court an opportunity to study at more leisure the law as the government sees it and as we see it. That we have undertaken to do, both in the memorandum which I just handed to your Honor and in a supplemental memorandum, which I shall advert to in a few moments and also give to your Honor.

Now, in the memorandum which you have, we have confined ourselves to one issue and that is the timeliness of the government's offer of evidence of this character. In other words, is the record now in such a state, has sufficient been established in support of the indictment, as of this time, that under the decisions it would be proper to admit an inculpatory statement? We say that that is not the case, that there has not been sufficient evidence introduced into this record as of this moment, as to constitute a foundation or predicate for the introduction of any inculpatory statement.

Now, counsel for the government yesterday, in the brief moment we had to discuss this issue cited a case, a case from the 9th Circuit to which we advert and which we cite by volume and page in our memorandum and that is the case of Adolfson v. United States, decided in 1947 in the 9th Circuit.

Now that case is very plain: the language is very clear, and that case holds this: "The order in which evidence to prove the corpus delicti is to be received is not important and is largely a matter within the discretion of the trial court. If proof in the nature of independent corroborative evidence to support the introduction of a confession at the time of its introduction is not important, it is sufficient if it is forthcoming at some point in the trial."

Now, no one can argue that language is ambiguous. It certainly is clear. However, we submit when the Court used the phrase that the order in which evidence of this nature was received is not important, I think the Court spoke rather lightly, because in the next breath the Court says, it rests in the discretion of the trial judge. So the appellate court cannot say that a matter that would be submited to your Honor's discretion is unimportant or important, when you would determine of its importance, and in the light of that importance or lack of it, would exercise your discretion. And thus we submit that this case is authority only for the contention that the question rests in the sound judicial discretion of the trial court.

Now, that is what the 9th Circuit has said in its most recent case. This Court with its many many years upon the Bench, surely has seen judges come and go. The Circuit now composed, whether the 9th, 5th, 4th, 2nd, may be composed of more learned or less learned men than their predecessors, but if a Circuit Court from the 9th Circuit, let us say, in the year 1940 had felt differently upon this question of procedure and had expressed their opinion, surely it would be worth this Court's consideration. It is not a matter of substance as to which the court has considered other decisions and said: "Now we feel compelled

to take a different view of the law." Thus we would follow the later decision of the Circuit. That is not the case. In both instances the Circuit was dealing with a matter of procedure, one in which anyone exercises a considerable discretion and point of view.

So, I suggest the case I am now about to cite and what is therein stated by the 9th Circuit is worthy of equal consideration, notwithstanding there is a variance in the point of time when the Court spoke and that the Court was composed of different judges. Now, in 1940 the 9th Circuit in the case of ..... v. United States, cited in the brief, that court said this on identically the same question, and I quote: "Appellant bases several of his objections and motions to strike upon the charge that the corpus delicti was not established by the evidence in the absence of the written confession." And in the next sentence I direct your Honor's particular attention, the Court then said: "It is, of course, settled that the confession cannot be admitted until the corpus delicti has been established."

Now that equally clear-cut and pithy sentence appears in a case involving the same principle, out of the same circuit, within a span of just a few years. Thus there is within the 9th Circuit now a conflict as to the views upon what is the best procedure in such a case.

Now we have undertaken to research the law as it has emanated from this 6th Circuit and we are not perfect researchers, but we have been unabe to find any decision of the 6th Circuit establishing any rule upon this question.

Now that being the case and since this is, as we contend a matter of procedure and not of substance, what should be the course to be taken by this Court, where there is no guide or rule from this Circuit on this question?

We contend that since it is procedural that this Court with propriety may and ought to look to the decisions of the state of Ohio, because traditionally matters of procedure in our Federal District Courts, when not in conflict with any federal rule should be based in keeping

with the established principles of the state court. There are many historical reasons for that. It avoids confusion as between the two courts. It places the citizen in the jurisdiction of the state court and his federal court of that district in a more secure position as to what procedure should be accepted in both courts, where you go from one to the other every day.

Thus we do suggest in our brief that your Honor give consideration to the decisions of the appellate and higher courts of the state of Ohio on this procedural question and I want to go into the question further. We have set them forth fully. We have quoted from Ohio jurisprudence. We have quoted from the Federal Rules of Criminal Procedure, from which it appears, as of today, the Federal Rules do not set forth any rule which would be in disharmony with the rule existing in the state of Ohio.

Having developed these points in our brief that upon the decisions of the 6th Circuit there is no rule, still looking to the federal cases, the 9th Circuit in one case would support the government and in one case would support us.

One case I haven't mentioned. We go to the 5th Circuit and we find the case of Butt v. United States cited herein and the 5th Circuit clearly supports the position which the defendants take here. At the risk of repetition I say that in looking to the circuits this Court will find nothing in our own Circuit, the 6th. In the 9th it will find an opinion pro and an opinion con on the same issue. In the 5th Circuit you will find an opinion supporting the defendants' contention. And thus I say that the Court could and shall properly look to the decisions in the state of Ohio, and as I have stated they favor the defendants' position unquestionably.

We reach the conclusion in our memorandum that since this is a matter of procedure and since the better rule and the general rule and the established rule in Ohio is that the confession in point of time—I speak of confession in general terms—any statement, written or oral of an inculpatory nature sought to be introduced during the trial

of the case must not and should not be introduced prior to the time that the government has independently and before this inculpatory statement is resorted to, has established in the record in the case elements constituting the corpus delicti, not beyond a reasonable doubt, not even to the extent of making a prima facie case, but they must establish in the record evidence, sound evidence from which an inference of the existence of every element of the corpus delicti as evidence. That we say clearly, in conclusion, the government has not done, even in a scintilla.

If your Honor will consider the state of this record as it is now, I am sure you can take no issue with me when I say that with respect to the crime charged in count 1 of the indictment the record now is void of any evidence establishing or tending to establish an agreement on the part of the defendant Hollifield to receive compensation from the defendant Opper for service of any kind whatsoever. There is likewise no evidence establishing or tending to establish that the defendant Opper did aid, abet, counsel, induce or procure the defendant Hollifield to do anything. Such is true as to count 2, such is undeniably true as to count 3 and count 4.

Now, as to count 5, the record is void of any evidence establishing or tending to establish any unlawful conspiracy of any character whatsoever between the defendant Hollifield and defendant Opper and there is absolutely no evidence whatsoever tending to prove commission of any of the 13 overt acts in the indictment.

On that premise and by virtue of these authorities, we conclude respectfully that our objection in this instance should be sustained and any further effort on the part of the government to offer, through the testimony of a witness, evidence of oral admissions or through the tender of a document to offer evidence of written inculpatory statements is premature and will continue to be premature until the government can say on the record: "By this and this we have established the elements of the corpus delicti and now, therefore, these statements become admissible in point of time and in point of substance.

I conclude now as to that point. Does the Court wish me to go forward on those other elements of severance or shall I wait for the government's reply?

The Court: Do you wish to be heard on this point?

Mr. Kelley: I meant to say and overlooked it, your Honor, that we have filed here and prepared a joint memorandum on behalf of both defendants, and it was understood between us that I should speak on behalf of both in this connection and I would like the record so to show.

The Court: All right.

Mr. Kelley: Counsel has just brought to my attention, your Honor, that he understands from counsel, I believe for the government, that as to the case in the 9th Circuit to which I adverted, the Adolfson case, that application for certiorari was made and that certiorari was denied. Now, I haven't researched that aspect of it and possibly the government has, but, of course, the mere denial of certiorari, unless it can be demonstrated this was one of the points upon which application for certiorari was denied would be meaningless.

The Court: Do you think the court would have denied certiorari if it thought there was a conflict?

Mr. Kelley: Many times application for writ of certiorari is made and the appellant will select one or two points which to him are important and ignore many others which were at issue below, and the denial of certiorari would be meaningless, unless it could be demonstrated that in the petition for the writ one of the claimed points of error was the decision on this point. I submit I haven't looked that up and we must not consider certiorari at all until that can be definitely demonstrated, if it can.

The Court: Pardon me. Just one second. Point 1 is on page 2. Point 2—

Mr. Kelley: Point 2 is at the top of page 3, your Honor.

The Court: Point 3 is on page 4.

Mr. Kelley: Point 4 is on page 7, your Honor. That is the last point. I forgot to say, it was my intention to express our thanks to this Court and to the attorneys for the government in letting us extend this time over from 11 until 1, and because we are rushed is the reason we did not affix an index to our memorandum.

The Court: It is quite all right. I want to give you all the time. I want to get the benefit of the law as counsel see it on both sides.

Now, perhaps we better hear from the government on this point and take up the other point later, if you care to do so.

Mr. Richter: May it please the Court, at the outset we would like to submit it is the position of the government that it is the understanding of lawyers generally that denial of a writ of certiorari does mean that there is no substantial error in the case.

Of course, the position of the government is based essentially at this state of the proceedings on the Adolfson decision. If that has been approved by the United States Supreme Court, we submit to your Honor that it is determinative of the issue immediately before the Court.

Briefly, however, we might direct the attention of the Court to the fact that the wording of the decision in the 9th Circuit, which counsel for defendants has cited to the Court is basically in conflict with the fundamental rule which the 6th Circuit has approved in the Anderson case, reported in 124 Fed. (2). I am going to give you the citation.

The Court: Do you have a memorandum?

Mr. Richter: No, I haven't a memorandum. We haven't a stenographer available and we haven't a written memorandum.

The Court: 124 Fed.

Mr. Richter: The Anderson case is reported in 124 Fed. (2) at page 58.

Now, if the Court please I might make that a bit clearer by directing the Court's attention to the fact that there are two conflicting rules relative to the admissibility, the fundamental admissibility of confessions under circumstances such as these. These two rules are as follows, and I am taking this from a memorandum which I can submit to the Court, which has been prepared in the Department of Justice. The first rule is this: "Any corroborating circumstances, independent of the confession, will serve, which in the judge's opinion go to verify the truth of the confession. Independently they need not establish the truth of the corpus delicti at all, neither beyond a reasonable doubt nor by a burden of proof."

Now that rule has been enunciated by Justice Learned Hand in a decision in 250 Federal Reports, at page 566. That is the leading case on the so-called liberal rule for the introduction of confessions.

The second rule might be termed the strict rule. This rule may be summed up as follows: "There must be independent of the confession substantial evidence of the corpus delicti and the whole thereof, but such corroborative evidence need not establish the corpus delicti beyond a reasonable doubt."

Now, if the Court please, there are decisions on each side and there are many decisions of varigated shade in between. I think for the purpose of this motion that the Court will probably be interested in what the 6th Circuit Court has said and likewise perhaps what the 2nd Circuit has said, the New York Court.

In the 6th Circuit we have already cited to the Court the Anderson case in 124 Fed. (2), which without going into detail at this time, we submit does follow the liberal rule enunciated by Judge Hand in the New York decisions, 250 Fed., page 566.

So that I think we can state to the Court that the 6th Circuit and the 2nd Circuit are in accord in following the

rule, the liberal rule enunciated in the Daeche case in 250 Fed., at 566. Now, that being the case, if the Court please, there is a conflict between the language which counsel has cited from the 9th Circuit case, 111 Fed. (2) at 751, and the ruling in the 6th Circuit case. If we take the language from the 9th Circuit, quoting as follows: "It is, of course, settled that the confession cannot be admitted until the corpus delicti has been established", that is not true in the 6th Circuit.

So that the rule of procedure which counsel has enunciated to the Court as being in effect in the 9th Circuit is fundamentally in conflict with the law in the 6th Circuit. Therefore, we submit that the 6th Circuit should control.

Now, if the Court please, the basic distinction between these two rules, I believe, is this: In the liberal construction, the emphasis is placed not on the proof of corpus delicti, but is placed on proof of corroboration of the confession itself and that position has been clearly enunciated by a very recent case. In 192 Fed. (2) at page 574, that is the case of United States v. Markman et al. In that case the court emphasized the fact that the rule prohibiting the introduction of confessions except under proper circumstances is designed not so much to offer evidence of proof of the corpus delicti to complete the proof of t[he] offense, but is directed rather to corroborating the truth and the reliability of the confession.

The court in this decision and in some other decisions which we have seen refers to the fact that when you do introduce a confession, the confession is evidence of the corpus delicti. It is direct evidence of the corpus delicti. It is not merely corroborative evidence of other testimony in the case which goes to prove a corpus delicti.

Therefore, the purpose really is rather to corroborate the reliability and the truth of the confession and to insure that there hasn't been any untrue confession, or any confession which has been extorted by illegal means.

Therefore, we submit, if the Court please, that on the basis of the decisions, in the 6th Circuit in which this dis-

trict is located, which are in harmony with the decisions in the 2nd Circuit, the rule of procedure is in conformity with the substantive law on the subject, as to admissibility of these confessions, to the effect that it is not necessary in this Circuit to establish proof of corpus delicti and all the elements thereof in any respect, at any time, whether in the middle of the case or at the end of the case. Therefore, that in this instance it is entirely within the sound discretion of the court to permit this to be done, that the Court, we believe, may give some consideration to the fact that the government should be permitted to prove its case in such manner as it sees fit and that no damage can be done, if at the conclusion of all of the testimony the Court then decides whether or not, beyond a reasonable doubt, the corpus delicti has been proved, not only by the confession, but by any other evidence that might be in the case at that time.

The Court: Is it the thought of counsel that at this time the Court, without any indication, I understand that upon the part of the Court, without any indication on the part of counsel, that they are abandoning what they have already argued, is it your thought that you will present to me some arguments and authorities on this question of severance, in the event it should possibly be that the Court would overrule the objection?

Mr. Kelley: Your Honor, I understood that is what was desired.

The Court: I did say that. I still say so, if it is agreeable to counsel. My point is, in trying to save time both for the Court and counsel, as well as the jury running back and forth to the jury room every few minutes, in the event we go on with these matters.

Mr. Kelley: On the earlier point, your Honor, I do wish to request about one minute of rebuttal.

The Court: Oh, yes, certainly.

Mr. Kelley: And in a sense that comes very close to the matter now under discussion. Brother Richter cited the Anderson case in the 6th Circuit and he cited a case in which the decision was written by Justice Hand, 2nd Circuit. I suggest only that in citing those cases and the decisions in those cases, counsel is undertaking to assert what the law might be on the question of substance not of procedure. Those decisions may go to establish what might be the corpus delicti in a given case and the nature of corroborative evidence. I suggest that they are not in point on the immediate issue now being argued, that is, on the timeliness of introducing evidence from a procedural rather than a substantive standpoint. I had stated this in point 1 at the conclusion of point 1 in our memorandum, so there may be no misunderstanding what points we are covering in this argument which has been afforded to us: "The question of what constitutes"—that is at the bottom of page 2, the last paragraph under point 1—"The question of what constitutes corpus delicti."

At that time, we will meet the cases cited here, the Anderson case and Justice Hand's decision, and we will cite in turn many other cases on that point which we feel the Court should consider on that point.

That is all I wish to say in rebuttal.

Mr. Richter: I believe I have made my position clear, that the substantive point is definitely involved, not the procedural, on the basis of the language used by the court in the 9th Circuit, that the court in the 9th Circuit definitely states there must be evidence of proof of all points of the corpus delicti before you can produce confessions. Therefore, it doesn't apply to the procedural situation in this case. The 6th Circuit, if it wouldn't support that decision in substance, certainly wouldn't support it in procedure. The reason given in the 9th Circuit that you can't introduce confessions at any time is that you must, before you introduce evidence of confessions, prove the corpus delicti. Now, that is definitely opposed to the position taken by the 6th Circuit, which holds that it is not neces-

sary in any case to prove the corpus delicti independently of the confession.

Have I made my point clear?

The Court: Yes, I understand the point you are making.

Mr. Richter: Mr. Aug has directed my attention to this consideration, that since the Adolfson case has been definitely determined and approved by the Supreme Court, it is the law of the 9th Circuit as well as of any other circuits that might follow that and consequently the argument submitted as to conflict of decisions doesn't hold up. The Supreme Court has placed the seal of approval on the language of the Adolfson case.

Mr. Kelley: I don't want to go on ad infinitum. On that last question of what does "certiorari denied" mean, if the Court will indulge me to go back to the day when I argued before Justice Hand in New York, I quoted to Justice Hand a Circuit Court decision from his own circuit, an old case, so to speak, and I saw fit to remark that certiorari was denied and from that bench Justice Hand asked me whether or not the point under consideration here was a part of the petition for certiorari and told me if it wasn't the words "certiorari denied" had no meaning for him.

Shall I proceed to the other question then, your Honor? As I say, I don't know—and we shouldn't burden the Court—what was in the petition for certiorari. I shall endeavor to do that, if those books are available to me any place in the meantime. (Hands document to the Court.)

The Court: This has to do with the matter of severance?

Mr. Kelley: Yes.

The Court: If you don't think this is proper procedure, we won't follow it. But may the record show that, assuming without deciding anything.—I will emphasize that as much as I can. Assuming for the present purposes only that the Court would sustain the government's position.

Very well. Then counsel for defendants, as I understand, will rise and address a motion in the record that there be a severance in this case on behalf of one or both of the defendants and the defendants be tried separately.

Now, may the record show that for our present purposes, of course, solely, as among ourselves, not for the jury, that this is proceeding as if there was now before the Court a motion for severance and instead of arguing it Tuesday morning, when the jury gets back, you are going to argue it now and give me the benefit of your authorities and your briefs—your arguments and your briefs and your authorities, so I can have those over the weekend.

Now, may we assume that position for the time being in the record, if ever we should reach that stage, defendants might, even so, want to make a motion of that kind, as a matter of record, but instead of my having to hear it all again, if we should reach that stage, I can pass on it in the light of what has been said now. Is that satisfactory, Mr. Kelley?

Mr. Kelley: Yes, your Honor. It is manifest that we have an exact understanding of what you just stated in the first paragraph of our memorandum, in which I say: "If and when the Court shall rule that inculpatory statements, whether written or oral, made by the defendant Hollifield are properly to be admitted in evidence.

I think that is very clear to us.

The Court: Is that agreeable to you, Mr. Richter?

Mr. Richter: Yes, sir.

The Court: Very well. You may proceed accordingly.

Mr. Kelley: We will undertake in this connection to make three points. That is, when I say "we" now, as to this I am speaking solely for the defendant Opper, and counsel for the defendant Hollifield will follow me and speak for their client as to these matters.

The first point that the defendant Opper makes is this, and all of this, of course, is predicated upon the assumption only that the Court may permit these inculpatory statements, either oral or written, to go in. But should such occur and in the light of that happening the defendant Opper suggests to the Court now that he is informed and believes (1) that the government is in possession of a written, signed and sworn statement by the defendant Hollifield embracing inculpatory admissions, not only as to the offenses charged in the indictment, but also with respect to divers other offenses or incidents or events to which he was a party, not related to the instant case, or the facts of the instant case.

Do I make myself clear, your Honor?

The Court: Yes.

Mr. Kelley: And secondly, we are informed, or at least we believe and assume that the government proposes before offering such a written statement of Hollifield in evidence in the case to obliterate all references in such statement to matters which the government believes are not relevant to the subject matter of the instant case.

Now, should such event occur, the defendant Opper contends that he should be entitled as a matter of right to examine such written instrument in its entirety, in order that he and his counsel might determine for himself whether or not the matters which the government would obliterate are, in fact, irrelevant to the subject matter of the instant case and I presume that would be a matter which the Court himself would wish to look into before approving any obliteration.

We say in this connection, the defendant Opper concedes that totally irrelevant matter should be deleted from such an instrument, but as we set forth in the following point that the name of Opper should likewise be obliterated and deleted therefrom.

What I have just stated constitutes point 2 in slightly enlarged language, to this effect, "Should any written in-

culpatory statement by defendant Hollifield be received in evidence during the joint trial of these defendants, it is submitted by the defendant Opper that his name should be obliterated or deleted whenever and wherever it may appear."

Our position is identical as respects testimony from any investigator purporting to give the substance of conversations with the defendant Hollifield wherein the name Opper may appear.

Our point 3 is this, that should the Court reject—again we are looking into the future possibilities, with the hope that this occasion will not arise, but should the Court reject aforesaid contentions, defendant Opper in such event, shall desire, in the light of that ruling, to renew his motion for severance based upon the grounds stated in his earlier motion for severance presented and argued here on the 24th of April this year and upon the additional decisions in this memorandum cited. I don't believe any good purpose would be served, your Honor, in my undertaking to read now from those decisions. Our position, I think, is elementary and clear. With that I will close. Copies of this have likewise been furnished to the government.

The Court: Do you wish to be heard?

Mr. Meyring: May it please the Court, we have a motion for severance which is prepared to be filed for the defendant Hollifield at the proper time and we have a memorandum that is now being prepared, which we want to submit to the Court, either this afternoon or sometime in the morning, at the Court's pleasure. Shall it be delivered here, your Honor, or to your home? We just didn't have the time to get it prepared to submit it today.

The Court: Better leave it with Miss Boyd in the clerk's office.

Mr. Meyring: We will deliver it out to your home, if you so desire.

The Court: No. I will have to come down here and do this work. I don't have all these books out at the house. There will be somebody in the clerk's office until 12. If you don't deliver it by 12, there is no use to bring it over until Monday. If you have it here by 12 tomorrow morning, give it to Miss Boyd. It isn't necessary to file it. Miss Boyd, just hold it for me.

Mr. Meyring: All right. On the memorandum with reference to the motion for severance, as has been stated, if and when the Court shall rule that inculpatory statements, whether written or oral, which were made by the defendant Opper, are presented and are properly to be admitted in evidence in this case, then the defendant Hollifield will be heard in respect to the following propositions: (1) The defendant Hollifield is informed and he believes that the government is in possession of a written statement or oral statements which they can produce by testimony, taken from the defendant Opper, which embrace admissions, inculpatory admissions against the defendant Hollifield, which refer to the crime or crimes charged in the indictment. So, should any written statement by the defendant Opper be received in evidence during the joint trial of these defendants, it is submitted by the defendant Hollifield that his name should be obliterated from any such statement.

The Court: You are talking about any statement by Mr. Opper.

Mr. Meyring: Any written or oral statements made by Mr. Opper to any representative of the government or the F. B. I. or O. S. I.

The Court: About Mr. Hollifield.

Mr. Meyring: About Mr. Hollifield, yes, sir. And should the Court reject this contention of the defendant Hollifield, then we will file this motion for the severance and cite decisions which we will present to the Court tomorrow morning upon grounds to be stated at a later time.

Now a point to be made, your Honor, is that the prejudice to the defendant Hollifield which must come from the receipt of evidence of an inculpatory nature made by his co-defendant Opper, wherein the name of Hollifield appears, is directly comparable to the prejudice which attached to the plaintiff in the case of United States v. Hale, which case is cited or will be cited in our memorandum, your Honor, the same as it is in the memorandum for Opper. In this case Hale was denied severance from his co-defendant and in reversing the decision of the District Court, the 8th Circuit Court of Appeals stated: "It is necessary therefore to determine whether the confession of Ramsey, one of the defendants, as introduced was necessarily prejudicial to the plaintiff and whether in view of the fact that its introduction was anticipated, the motion for severance should have been granted. Connection of Hale with the crime rested almost entirely upon the testimony of Burkham, himself a confessed criminal and a man of bad general character. It is debatable whether the confession of Hale would have resulted from his testimony in the absence of strong corroboration contained in the Ramsey confession. But concededly the confession of Ramsey was incompetent to bind Hale."

That is our position in this case. It is conceivable now and perhaps indicated that the government is attempting or will attempt to introduce written or oral statements or confessions made by the defendant Opper, which include the name of the defendant Hollifield. As I say, your Honor, that is the case of Hale v. United States, 25 Fed. 430. The principle involved in that case, your Honor, upon which the defendant Hollifield's contention is based has long been established in the common law and followed by many judges throughout the various state courts.

There is another reference which will be cited, People v. Buckminster, 113 N. E. 713, an Illinois case decided in 1916. In this Buckminster case, Buckminster and Friedman and Fink were indicted for arson. Fink confessed and he testified at the trial that he had confessed and

the state's attorney introduced his confession, only for the purpose of impeaching him, because previously it had been ruled that the confession was not voluntary. Buckminster objected to the introduction of the confession insofar as it related to him, but it was admitted for that purpose and the jury was instructed not to consider it in determining the guilt or innocence of Buckminster. Buckminster was convicted and he appealed and the court said in one part of its decision: "Our attention has not been called to any case in the briefs and we know of none where this precise question under the circumstances shown in this record has been passed upon. But on reason and by application of the principles that have become settled by law by other decisions we cannot see why the criminal law cannot be more justly and wisely enforced by holding that the part of the confession which affected Buckminster should have been refused admission. The reading of this confession admitted in evidence shows clearly that Fink had confessed his own guilt before he said anything as to Buckminster being connected with the crime." And the court then held that the trial court should have sustained the plaintiff's objection to the introduction.

Another case which is in accord with the Buckminster holding, 152 N. E. Illinois, 1926, Miller v. People, 55 Federal (2) 320.

Now, your Honor, while it may be presumed that the Court will instruct the jury that such statements, inculpatory statements and admissions may not be considered in determining the guilt or innocence of this defendant, this moving defendant Hollifield, nevertheless, your Honor, the likelihood remains that such instructions might confuse the jury. The instructions might be misconstrued by the jury, or the jury might inadvertently ignore such instruction, which, of course, will be to the prejudice of this moving defendant Hollifield.

Now, your Honor, thank you for your indulgence and we will see that this memorandum is presented to you not later than 12 o'clock tomorrow morning.

Mr. Richter: May it please the Court, on the subject of severance, we haven't had an opportunity to go over counsels' brief thoroughly. However, again, we submit to the Court that a decision in the 6th Circuit is of greater interest than those from other circuits, and we believe that this question is controlled by a very recent decision of the 6th Circuit Court of Appeals, Sharp v. U. S., No. 11379, decided on April 17, 1952. I don't have that decision with me but I might read some notes that I made, which, of course, the Court will desire to verify at his convenience.

In this Sharp case there was a motion for severance on the ground that the co-defendant had made certain statements intended to implicate the appellant, which when introduced in evidence would create an ineradicable prejudice in the minds of the jurors in their consideration of the guilt or innocence of the appellant.

The court in denying the motion quoted from Judge Augustus N. Hand in the case of U. S. v. Cohen, reported in 124 Fed. (2) 164, at page 166. Certiorari denied 315 U. S. 811. And we quote: "It is common in cases of joint indictments that there is hostility of some of the defendants to the others and that they will try to save themselves by placing the blame on associates in the crime. The jury can and does weigh the inducement of some defendants to implicate others in determining guilt. We find no error in the disposition of the motion to compel a severance and hold that the order denying it should be affirmed."

The 6th Circuit Court of Appeals thereupon says, "It was correctly stated that the granting of the motion by one of the defendants jointly indicted for severance and separate trial is ordinarily within the discretion of the District Court." Of course, the discretion of the District Court depends on Rule 14, I believe, which gives the Court the power to decide in matters of that kind.

Now addressing ourselves to the question of the obliteration of the names of the two defendants from the respective confessions, I don't believe that counsel verbally or in their memorandum have cited any authorities on

that subject. We submit to the Court, it is our view that the name of a person mentioned in a confession, other than the confessor, is certainly a relevant part of the confession and that matter, of course, could be determined upon presentation of the confessions to the Court and discussion by counsel. We certainly feel that if the names of these defendants were obliterated, the meat of the confession would no longer be there; they would be deprived of the power and effect which they naturally should have, and these names are clearly relevant portions of the confessions.

Other than that, at this time, we have nothing else. Perhaps, if the motion should become active at a later date, it might be in order to submit a reply memorandum.

Mr. Kelley: I have only one word of rebuttal to utter, that is, that we, of course, concede that the issue on a motion for severance rests in the judicial, sound discretion of the judge. That is elemental and always has been. I only say in passing that if there are actions which warranted the exercise of that discretion in favor of defendant every time, we might as well wipe that out of the rules; no use to have it. We submit this is a case warranting the exercise of that discretion in the interest of justice for the defendants.

The Court: Anything further?

Mr. Svoboda: Nothing further.

The Court: Except to get the brief of counsel for Mr. Hollifield, which will be left with the clerk tomorrow, I understand the case on these matters is now submitted to the Court. I am going to adjourn court until Monday morning. This case, you understand, is going over until Tuesday morning. I so instructed the jury. I don't want you to get confused about it. The court goes on even if the case doesn't. So, I will adjourn court now until Monday morning, at 11 o'clock and recess the further hearing of this case until 11 o'clock on Tuesday morning.

Thereupon the further proceedings in this case were adjourned until 11 o'clock Tuesday morning, court being adjourned until Monday morning.

Morning Session.

Tuesday, May 20, 1952.

Court met pursuant to adjournment. Counsel being present as heretofore noted, the following proceedings were had out of the presence of the jury:

The Court: Do counsel wish to be heard further on any matters pending before the court, before I proceed? I assume not.

Mr. Kelley: Well, if your Honor please, I hate to keep an argument going forever, but since I had the opportunity to discuss this question with the Court last Friday, there has occurred to me a fact that one further cogent reason why, in exercising its discretion as to when evidence of this character ought best to be admitted, if at all, this other factor occurred to me, that should the Court permit inculpatory statements to go into the record in the case upon the expectation that later on in the government's case it would introduce independent corroborative proof sufficient to render the statement admissible, I suggest that the better practice ought to be for the further reason not to permit introduction of the inculpatory statement until the Court is satisfied that sufficient corrborative proof of corpus delicti is already in the record. And that record is this, further relying upon the government's assurance or expectation later on to put in corroborative proof and when the government closes, should the Court then with all the record before it decide that there is not sufficient corroborative evidence to have warranted the introduction of the confession, then the Court would, of course, strike it out.

However, in striking it out clearly such prejudice would have resulted to the jury then that in all probability the

Court would be impelled to declare a mistrial. I suggest that also as a cogent reason why it would be the better practice to allow the government to put in all the proof, to avoid a mistrial in the event the Court would ultimately rule it should not go in.

The Court: Does the government wish to be heard?

Mr. Richter: If the Court please, that, of course, is a consideration which the Court in the Adolfson case undoubtedly had before it. We submit to the Court that is an argument which could be in any case of this kind and if a rule has been established that these statements may be introduced at any time, we believe that the argument presented by counsel in this instance has no form. In other words, we are standing upon the rule as enunciated in the Adolfson case.

Mr. Kelley: Did you receive our additional memorandum?

The Court: Yes, I received that and I will not in my decision of this matter—I am not going to take into consideration the question of whether or not the Supreme Court denied certiorari. I think that adds nothing to the matter one way or the other.

Now, Gentlemen, of course, I have had in mind the very point that counsel for defendants make and it is one of the serious matters that has weighed heavily with the Court ever since we started to talk about this matter. However, I will proceed to decide the matter as I think it is proper under the circumstances. Of course, if I am in error, it is to be regretted in this and in every case where the trial court has a mistaken view of the law. It is always unfortunate for all parties.

Let the record show, please, as no doubt it does that what I am saying and what counsel have said and all that has been taking place here this morning is in the absence of the jury and will continue to be in the absence of the jury unless and until your record shows affirmatively that the jury is ordered back into the court room.

On Thursday afternoon of last week, May 15, 1952 the government called the witness Noble. His preliminary examination showed that he is a special agent in the Procurement Section of the Office of Special Investigation, Inspector General of the Air Force, and as such he was asked whether he knew the defendant Hollifield. The witness said that he did. He further testified that together with another special agent by the name of Collins they had had a conversation with the defendant Hollifield, in the office of Special Investigation, on September 26, 1951. Thereupon the Assistant United States Attorney, on behalf of the Government asked him the following question: "Will you relate to the Court and the Jury the preliminary discussion that you had with Mr. Hollifield on that occasion?" Counsel for each and both of the defendants objected to the witness proceeding to relate the conversation to which he had referred.

Before there was any further discussion with reference to the matter, the Court asked the Jury to retire to the jury room and thereafter all proceedings had were and have been in the absence of the Jury.

It was suggested by the Court and agreed to by counsel for the Government as well as for the defendants, repectively, that the legal questions involved in the admission at this or any time of any conversations or confessions, so-called, might well be heard and disposed of at this time rather than to have an objection entered to each and every question, during the progress of the trial before the Jury.

Counsel for defendants stated that they would like an opportunity to be heard fully and in addition to that to file briefs in support of their contentions, together with the authorities upon which they rely. This suggestion, too, was satisfactory to the Government and quite agreeable to the Court.

Thereupon, the Jury was ordered back into the court room and were instructed that they were at that time excused and not to return to the Court House until today, Tuesday, May 20, 1952.

After the jury had retired counsel for defendants requested that they be given until the next day, that is, Friday, May 16, 1952, in which to prepare their briefs and at the same time present their oral argument. This arrangement was agreeable to both the government and the Court.

On Friday, May 16, 1952, counsel representing both of the defendants filed a memorandum in support of their objections and at the same time argued the points at issue orally.

The Government's counsel stating that they had not had an opportunity to answer the memorandum filed on behalf of the defendants, stated that nevertheless they could present their views and authorities by way of oral argument, which they did. After counsel for the respective parties and for the defendants respectively had been heard the questions at issue were submitted to the Court for its determination.

The cause is now before the Court, therefore, on the objection of defendants to the admission of the testimony of the witness Noble, tendered last Thursday afternoon.

In his oral argument on last Friday, Mr. Kelley, counsel for the defendant Opper, but in this instance speaking, as he stated and the record shows, on this particular matter, on behalf of both defendants, made the following statement: "* * * * Now, in the memorandum which you have, we have confined ourselves to one issue and that is the timeliness of the Government's offer of evidence of this character. In other words, is the record now in such a state, has sufficient been established in support of the indictment as of this time, that under the decisions it would be proper to admit an inculpatory statement? We say that that is not the case, that there has not been sufficient evidence introduced into this record, as of this moment, as to constitute a foundation or predicate for the introduction of any inculpatory statement."

It is the contention of the government that the time of introduction of such evidence as is now here objected to

is not important in relation to the proof of the corpus delicti.

In connection with their oral arguments and in their memoranda filed with the Court numerous authorities are cited by counsel to sustain their respective contentions. For the present purposes, however, the Court thinks it is unnecessary to deal with but a very few of these authorities which are particularly stressed.

The Court's attention has been called to two cases, both decided by the 9th Circuit Court of Appeals. The one Quong v. U. S., 111 Fed. (2) 751 decided on April 29, 1940. In that case the Court of Appeals quite definitely stated, on page 756, that "It is, of course, settled that the confession cannot be admitted until the corpus delicti has been established."

Subsequently, however, in the case of Adolfson v. U. S., 159 Fed. (2) 883, the same 9th Circuit Court of Appeals, on February 6, 1947, as distinctly held that,—reading first from the head note—"The order in which evidence to prove corpus delicti is to be received is not important and is largely a matter within the discretion of trial court and if proof in the nature of independent corroborative evidence supports introduction of confession, the time of introduction of such evidence is not important, but it is sufficient if such evidence is forthcoming at some point in the trial."

And in the decision or opinion, it is at page 887 and 888, the Court say, "All of this is made more apparent by the fact that on May 25, 1945 appellant freely and voluntarily made a written statement in the nature of a confession in the presence of a San Francisco police officer and a member of the F. B. I. The confession was introduced in evidence over the objection of the Appellant that the corpus delicti, that is, the knowledge required by Section 87 had not been established by independent evidence and, therefore, the document was incompetent, irrelevant and immaterial. We think the government did show corroborative independent evidence tending to prove the corpus

delicti and to verify the truth of the written confession it was properly admitted." Citing authorities. "The order in which evidence to prove the corpus delicti is to be received is not important and is largely a matter within the discretion of the trial court."

Neither of the foregoing decisions are controlling upon this Court. This Court is bound only to follow the law as laid down by the Circuit Court of Appeals of this (6th) Circuit and the Supreme Court of the United States. However, decisions from other circuits should always be considered by the Court and many times are most persuasive.

In the present instance where there appears to be some conflict between the decisions in the 9th Circuit, this Court must consider that the Court of Appeals of that Circuit had notice of all of its decisions prior to the one in the Adolfson case on February 6, 1947, and that in deciding the Adolfson case that court took into consideration what had also been decided by the same court in an earlier decision.

A very recent decision in the case of U. S. v. Markman, decided as late as January 14, 1952, this Court thinks throws a great deal of light on the admissibility of the testimony now objected to and has helped the Court reach its final conclusion. In that case, decided by the Court of Appeals of the Second Circuit in New York, the court held "The purpose of the rule requiring corroborative testimony is only to guard against convictions based on an untrue confession and its function is not so much to give evidence of defendant's guilt as to supplement his confession to that effect." And in its opinion on page 576 the court said: "Whatever may be the rule elsewhere we have held that the extra confessional proof required need not itself preponderantly establish the guilt of the defendant. If it shows by independent facts that the crime has been committed against which the jury can measure the reliability and consistency of a defendant's own statement this is enough. The purpose of the rule requiring corroborative testimony is only to guard against convictions based

upon untrue confessions. Its function is not so much to give evidence of the defendant's guilt as to supplement his confession to that effect." Citing numerous authorities.

This very recent decision by the Court of Appeals of the Second Circuit is in keeping with an earlier one by that circuit, in the case of Daeche v. U. S., 250 Fed. 566, decided March 14, 1918. That case was decided by no less a distinguished jurist than Judge Learned Hand. There it is stated "While some sort of corroboration of a confession is necessary to a conviction and that rule prevails in the Federal Courts, the corroborating circumstances need not be seen in themselves to establish the corpus delicti, either beyond a reasonable doubt or by a preponderance of the evidence."

Both of these decisions are in keeping with a decision along these same lines and bearing upon the question now before this Court by the Court of Appeals of this (6th) Circuit, in the case of Anderson v. U. S., 124 Fed. (2) 58. In that case the Court of Appeals of this circuit said: "The admissibility of a confession is necessarily addressed in the first instance to the District Court. A confession if freely and voluntarily made is most satisfactory type of evidence and it is deserving of the highest credit inasmuch as it is presumed to flow from the strong sense of guilt and therefore it is admitted as proof of crime to which it refers." And on page 66 of the opinion the court says, "If there is in the evidence, in addition to the confession circumstances which although they may be susceptible of an innocent construction are nevertheless calculated to suggest the commission of a crime and for the explanation of which the confession of the particular defendants furnishes the key, the case cannot be taken from the jury for failure to show corroboration. All that is required is that there be such substantial corroborative circumstances as will, when taken in connection with the confession, establish the corpus delicti beyond a reasonable doubt."

The matter before this Court now, however, is a procedural matter, and a procedural matter in a criminal case

at that. As stated by counsel for defendants themselves in their brief, "The issue is directly concerned with the order of proof." This Court is not bound by the decisions of the state of Ohio on questions of procedure. The rules applicable to civil cases where substantive law is involved are not applicable on questions of procedure in the United States Court and least of all in criminal cases where the court follows the Federal Rules of Criminal Procedure.

Upon a complete consideration of the briefs and arguments of counsel, the authorities cited and with a full sense of the responsibility which rests upon this Court in making this ruling, the Court is of the opinion and so finds that the objection is not well taken and that it should be, and it is overruled, and all of the testimony about to be offered, unless subject to some specific objection, will, of course, be admitted.

Now, Gentlemen, before calling back the jury, if there is any further procedure which the defendants would like to take and indicate they would like to take in their brief, I, of course, would like to give them an opportunity. Both defendants have indicated if we reach the stage we have now reached, they may want to do something further and I want them to have the opportunity to do that.

Mr. Kelley: Well, your Honor, I do not wish to be impertinent, but are we properly to understand that your Honor's decision just announced is limited to the question that we stated in our brief, merely the order of proof and the timeliness of this offer as opposed to whether or not the Court is ruling as to how much, if any, independent corroborative testimony may be needed ultimately in the case as a whole to justify admission of the confession?

I mention this only for this reason: We stated in our briefs that we were addressing ourselves solely to that question of the timeliness, with the thought that now the Court has ruled at the close of the government's case, we, of course, would appreciate the right to be heard on the question of how much, if any, and of what character must the corroborative proof be to consider it. It is my impression that is still a matter on which we may be heard.

The Court: All I can say is, it is the opinion of the Court that there is sufficient in the evidence at this time to justify introduction of these admissions, or perhaps, so-called confessions, if you reach that stage.

Mr. Kelley: Then we come to the next question. We have indicated to the Court that we would desire and do now move on behalf of the defendant Opper that as respects any testimony of the witness presently called to the stand, the same to apply to any subsequent witness who will testify to conversations of the same character, that the Court do not permit and by proper order shall instruct the witness that as to any conversations had with the defendant Hollifield and as to any written statement which he may have obtained from the defendant Hollifield and which he may undertake to identify, that the name of Opper be obliterated or deleted therefrom.

The Court: Yes. I will overrule that.

Mr. Kelley: Upon the basis of the two rulings just now made on behalf of the defendant Opper, we move for a severance upon the grounds heretofore argued last Friday.

The Court: I think the other counsel want the same kind of motion.

Mr. Meyring: We have our motion for severance, your Honor, that we will file if the Court ruled as it did this morning on the subject. That is a similar motion, your Honor, to the other.

The Court: I think it might be well, Mr. Meyring, if you would be kind enough to read that into the record so we will have it in our present record and also at the same time probably or during the day file it in the office of the clerk, so it will appear both places.

Mr. Meyring: "Motion for Severance under Rule 14. Now comes Robert George Hollifield, Sr., one of the defendants herein by his undersigned attorneys and moves the Court to grant a severance to him in the above entitled

case." That is signed by Frank J. Svoboda, Jr. and Arthur W. Meyring, Attorneys for defendant Robert George Hollifield, Sr. I will—

The Court: Defendant Opper moves and has heretofore moved for a severance in this case. In the light of the Court's ruling just made defendant Hollifield now also moves for a severance in his own behalf. This matter was argued to the Court on Friday of last week. Later the Court was supplied with authorities on behalf of both of the defendants as to why the motion on behalf of one or the other should be sustained. The motions were argued orally also on behalf of the government.

The cause is now before the Court on these motions. The question of whether or not there should be a severance in this or in any given case has been decided so very recently by the Court of Appeals of this Circuit as to need the citation of no other authority. The question was decided by the Court of Appeals of this 6th Circuit on April 17, 1952 in the case of Sharp v. United States. The only document I have with regard to it is the advance printed copy of the decision. The court was comprised of Judge Simons, Chief Judge, Judge Allen and Judge Martin. The decision was by Judge Martin. It may now appear in the Federal Supplement, the early reports of the Federal Supplement. I am not sure. I haven't looked it up. At any event, the Court of Appeals held in that case that the granting of a severance is a matter entirely within the discretion of the trial court and in so refusing the court commits no reversible error, unless the trial court abuses his discretion.

It is the view of the Court that in such a case as is now before the Court to require a severance, would defeat the very ends of justice; that is to say, these defendants are charged with having committed the offense of giving and receiving a bribe under the bribery section of the United States Code, Section 281, Title 18. It is impossible for one of the defendants to have received or to have agreed to receive the alleged bribe and it is impossible for the other

defendant to have given or agreed to give the alleged bribe without the presence of the other. It takes two to perform a complete offense charged, that is to say, the briber and the bribee.

The section of the United States Code herein charged to have been violated is entirely independent of the so-called gratuities section to which Section 1584, Title 22, under which the Razette and Kratz case was recently tried and the defendants convicted in this court.

There are no doubt many cases in which a severance should be ordered and some of these cases are referred to in the briefs of counsel. One for example is the Buckminster case, 113 Northeastern, 713, wherein the parties were indicted for arson. However, the offense there charged, and in these other cases, was so foreign to what is before the Court in this case as to make the authorities of no control or even persuasive effect.

The Court is of the opinion and so finds that the motions for severance and each of them, on behalf of the respective defendants, is not well taken, that each respectively should be and hereby they are overruled. The case will proceed as against both of the defendants jointly, as it has been from the beginning. I have already ruled on the question that there would be no deletion from the confession, so-called, of either one of these defendants. That also was argued before the Court and briefed by counsel. Of course defendants are entitled to and the record may show that they have their exceptions to all these findings and rulings and orders of the Court and to each and every matter herein ruled upon.

Mr. Kelley: Would you hear me briefly to make my record?

The Court: Oh, certainly.

Mr. Kelley: I conceive that in the event this case should ultimately reach the Court of Appeals and at that time if it should appear that any remarks of this Court would indicate that this Court was laboring under a misapprehen-

sion as to the exact nature of the crime charged in this indictment, as I respectfully believe the Court is, I think the Circuit Court would turn to me and say, "Did you bring that matter to the Court's attention when it appeared to you that the Court was of the opinion that this trial involved a different crime than the one named in the indictment?"

For that reason, your Honor, I merely wish to suggest this fact, it is our understanding that this indictment counts 1 to 4 is not laid under the bribery statute, which I believe is section 201, that this is a statute wholly apart from the bribery statute. I suggest that the defendant Opper, for whom I speak now, is in no sense charged criminally with giving anything. Each of the four substantive counts is laid exclusively as to Hollifield under Section 281 of Title 18. That is to say, that he is charged with having received, the defendant Hollifield is charged with having received compensation for the performance of services. At the conclusion of each of those counts the defendant Opper is charged with having aided and abetted and counseled the defendant Hollifield to commit the crime which it is alleged Hollifield committed. There is a very substantial difference in the elements of the crime under the bribery statute and under this statute, of which at the proper time we would want to be heard more.

My only purpose in this statement is to demonstrate that at this time we undertook to point out to the Court that this is not a trial of the defendant Opper under the bribery statute, nor is it a trial of the defendant Hollifield under the bribery statute.

The Court: Well, I would like the record to show that count 1 of the indictment doesn't charge the giving or the receiving by either one of the defendants in this case of anything. What it does charge is that Hollifield did directly agree to receive from Opper $1750 as compensation for the rendition of services, and defendant Opper is charged that he did aid and abet and counsel, induce and procure Hollifield unlawfully to agree to receive said compensation.

I shall charge the jury, if we reach that stage in this trial that in count 1 of the indictment it is not necessary that any compensation ever passed between one or the other of these defendants. The offense is and the statute so states in so many words that it is an offense to directly or indirectly agree to receive compensation. So that if they agreed to it, it is not material so far as count 1 is concerned whether any compensation was ever actually passed from one to the other. That is not true, of course, in counts 2, 3 and 4, in each of which, respectively, it is charged that the defendant Hollifield did receive compensation and in each count respectively that the defendant Opper aided and abetted in the receipt by Hollifield of the moneys or compensation charged in each one of the indictments.

Now, it is my view that a rose by any other name smells as sweet. I have reached the conclusion that all the time talking about gratuities in these matters, we are commencing to get away from the idea that after all it is founded on the idea that somebody agrees to, or as charged in the other counts of the indictment did pay certain money and somebody else did accept it, and I think that is what the government means, and I think that is what Congress meant when they passed a law of this kind. I don't think they meant it to be a gratuity like you give a tip to a waitress who waits on you at the lunch counter, or something of that kind. No. In the first instance, the defendant Hollifield or the defendant Opper alone could not have committed these offenses. The offense charged as an offense against the defendant Hollifield—Hollifield is the man who violated the statute No. 281 and defendant Opper is not charged with having done that and he couldn't be because that applies to a person who is an officer or employee of the government of the United States. But when you turn to Section 2 of the United States Criminal Code, then it says, "If anyone did aid, abet, counsel, induce or procure" somebody else who is an officer to violate the law, then he becomes a principal. In other words, it does

away with the aider and abettor idea. He becomes a principal and therefore, as such, he is a principal who has violated Section 281 by aiding and abetting the other man who falls under that section.

Now, that is my view of it Gentlemen and I am very glad to have your view in the record and mine. If the Court of Appeals thinks I am wrong about it, of course, they will say so. But I still believe when you violate these sections, it means in the final analysis to what is known in common language to the ordinary man as bribery. I don't think it means gratuities at all. That is my opinion.

Mr. Kelley: Would the Court indulge me for a further word?

The Court: Oh, certainly.

Mr. Kelley: Your Honor, I am in hearty agreement with precisely what you have said, on the theory of the facts charged in the indictment anyone exercising common sense would say, here the government is undertaking to charge facts that amount to bribery; that here is the giver and there is the receiver. We protest that they did not use the statute for bribery in charging these men. There is a United States statute for bribery and clearly, in the name of common sense, the facts alleged here should have prompted the use of that bribery statute where these elements are present in the statute and all must be proved. An injustice has been done, if the facts are proved which would be bribery by not charging it under that statute. To undertake to look to some other statute where the word "intent" is not found in the statutory language and thus select that where the proof is not so severe on the government. To suggest that a giver would aid and abet the receiver in receiving, I agree with your Honor on that.

The Court: Where you and I differ, Mr. Kelley, is this: The government brought this indictment under a law, a statute which provides for exactly what is charged in this indictment, Section 281, plus Section 2.

When I say bribery is involved, I am not meaning that a technical case of bribery as made out under the bribery section is charged here. What is charged here is a violation of a law that is very plain, if anybody will stop to read it.

What I am meaning to say is, when you get all through with all of the talk about the thing, that it comes down to the final analysis of what the ordinary man feels and has a right to feel, and what I think Congress felt was that this is in effect bribery, not technically, maybe, no. Maybe it doesn't violate technically some other section of the Federal Code, they having put in all kinds of sections in order to cover all kinds of situations.

But this indictment charges the violation of Section 281 and of Section 2. While it isn't perhaps bribery, under some other section, the effect of it is, when you get through, in my opinion, the same effect as if it was a matter of bribery.

Now, I think it takes two people to do what is charged in this case. Consequently, it is not a case where there should be a severance or a deletion. Whatever is said here, I will instruct the jury, as best I can. If the jury doesn't follow my instructions, that, of course, I can't help. But I will instruct the jury what Mr. Hollifield has said about Mr. Opper must not be considered by them as against Mr. Opper. What Mr. Opper has said about Mr. Hollifield, if anything he did say, must not be considered against Mr. Hollifield. That is the only thing the Court could do is to preserve the record in that respect. But I don't think that as a matter of law that it is possible to sever these defendants. If I should grant both of their motions, incidentally, I suppose that would be the end of the case, because if each of them is going to have the severance from the other, how are you ever going to proceed any further?

Be that as it may, Gentlemen, I would like to have a distinct understanding about this before I call in the jury. I approached this matter last week and I have worked on it over the week-end and I have felt the responsibility

that goes with my decision, because I understand what it means both as a practicing lawyer for many years and many years ago as a prosecuting attorney of this county. I never quite reached the height of a District Attorney. But in any event, I was prosecuting attorney for a while. So, I understand the importance of this matter. I understood and it is my understanding now when this witness Noble is recalled, if he is, that then as I indicated in my earlier decision, unless there is some specific objection to some particular thing that we were going to go ahead now and take his testimony and the testimony of the man Collins, if he should be called, without any further objection upon the part of counsel.

Now, of course, I understand that sometimes there is a specific objection comes up as to a particular matter and that, of course, I would not expect counsel to waive. But generally speaking, I understood I am passing on all these questions so we can proceed with the jury without any further interruption, with the record showing, of course, that counsel for defendants and the defendants have entered their objections to everything that is being said and everything that has been testified to, all the rulings of the Court and everything. I understand that. Is that your understanding in the matter?

Mr. Kelley: Yes, it is, your Honor, fully and entirely. I only want to make sure that the record demonstrates that our objection goes to all testimony from this witness, from which he undertakes to develop an admission of an inculpatory nature. Other than that we will not reiterate these objections.

The Court: That is correct. You have an objection. The record may so show counsel object to every question and move to strike out every answer and I overrule the objections and the motions to strike as against both and each defendant, because I have done that generally, and I understood that was the end we were working to, in order that we could go on with our trial, with the understanding

further that upon some particular matter counsel for either one or both of the defendants wish to enter a specific objection, of course, you have the right to do that. Otherwise, we won't have to take any further time to the discussion of these matters. Now with that understanding—Did you wish to be heard?

Mr. Richter: There is a secondary question involved here and that relates to certain parts of these statements which counsel for defendants might object to, or which the government might not care to present. It might be in order at this time to consider the contents of these confessions and determine just what may or may not—

The Court: No. There is nothing more for the Court to determine, Mr. Richter.

Mr. Richter: I see.

The Court: I thought I had made that plain. I have said that you may go ahead on behalf of the government and offer whatever it is that the government claims they have the right to offer by way of admissions or confessions, or whatever you may wish to call them. If there is part of it you do not care to offer, I don't know anything about that, I don't care to know anything about it. It is only what you do offer that the Court is interested in. I ruled on that earlier. I thought I did. I meant to anyhow. You go ahead. There will be no deleting of any names, so far as the Court is concerned. If the government only offers so much, then when we come to cross-examination, if they wish to, they may ask about something further. I have no objection to that.

Mr. Richter: I see.

The Court: The government may offer what the government wants to offer. Mr. Noble may take the stand and say, "The only thing we talked about was it was a nice day," which would be a rarity around here. That may be all there is to it. I haven't the faintest idea what you are

going to offer. You may offer whatever the government feels they wish to offer. If you want to leave part of it out, that is your business. I haven't anything to do with that, and I am not going to rule on it. You may put it all in as far as the Court is concerned. But if the government thinks part of it you should not put in, you don't have to offer that in evidence, but the other side may cross-examine about it, as far as they wish, if it is a proper thing to do. Do I make myself plain?

Mr. Richter: Yes, your Honor. I hadn't understood you correctly.

The Court: Now just a second. We will take a recess for just about five minutes until I get rid of these books. Then we will call in the jury.

Thereupon a short recess was had.

And thereupon the jury returned into the court room and the following proceedings were had in the presence of the jury:

The Court: Counsel may proceed.

Mr. Richter: Call Mr. Noble.

And thereupon

MR. MONCURE NOBLE resumed the witness stand and testified further as on **direct examination**, as follows:

By Mr. Richter:

Q. Mr. Noble, Thursday, I believe, last Thursday, you testified as to a conversation you had had with the defendant Robert Hollifield. Do you recall the date which you stated that conversation took place?

A. Yes. That was on the morning of the 26th of September.

Q. What year?

A. 1951.

Q. Will you relate to the Court and the jury the preliminary circumstances that occurred just prior to your discussion with him?

A. At 8:30 in the morning, I called Mr. Hollifield at his office at the Aero Medical Laboratory and asked him to come over to my office, that is, the office of the O. S. I., I wanted to talk with him and he agreed to come over and he arrived at about 9:30 in the morning, and upon his arrival at the office of the O. S. I., I directed him into an interviewing room and introduced myself and Mr. Collins, Lawrence Collins, another special agent, and after the introduction I informed Mr. Hollifield that I wanted to question him in regards to allegations I had received during the course of the investigation, which indicated that he had received gratuities and moneys from various contractors and contractors' representatives. I then furnished him a card that contained a section of the Fifth Amendment.

Q. Do you have that card with you?

A. Yes, sir. (Produces)

Q. All right. You may proceed.

A. I furnished him the card and asked him, after he read it, if he understood the contents written on the card and he said that he did.

Q. What were those contents?

A. As to the self-incriminating—

The Court: The card speaks for itself.

Mr. Richter: All right. We will mark it for identification as Government's Exhibit 36.

Thereupon said card was marked for identification as Plaintiff's Exhibit No. 36.

Mr. Richter: We offer in evidence Government's Exhibit No. 36.

The Court: There appears to be some memorandum in ink of some kind on there.

Mr. Richter: We will ask the witness about that, your Honor.

Q. Will you look at that card and state what the written memorandum on there means, if anything?

A. It is "received July 1951," initialed by myself. That is to indicate the date that I received this card from my office, when I was sworn in in my position, and I underlined the markings here on the card where it says, "Nor shall be compelled in any criminal case to be a witness against himself."

The Court: You underlined those words before?

The Witness: Yes, sir, I did. I underlined those at the time I got the card, just shortly after I got the card.

The Court: Was that underlining there when you showed the card to Mr. Hollifield?

The Witness: Yes, it was.

The Court: That is all.

Mr. Richter: Is it admitted, if the Court please?

The Court: Yes, it may be admitted.

Mr. Kelley: No objection.

Thereupon said card was admitted into evidence and marked as Plaintiff's Exhibit No. 36.

Q. Mr. Noble, will you read the contents of that card to the jury, please?

A. (Reads) "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of

law; nor shall private property be taken for public use, without just compensation."

Q. Now, what was that quote from? Is there a heading up there?

A. This is the Fifth Amendment.

Q. To what?

A. To the Constitution of the United States.

Q. Now, is there something on the reverse side there?

A. Yes. The information contained on the reverse side of this card is the 24th Article of War, which is read to or furnished to military personnel when they are under investigation.

Q. That has nothing to do with the immediate situation then?

A. No, sir.

Mr. Kelley: I object to that, whether it has or not, that is a conclusion of the witness, whether it has anything to do with the immediate situation.

The Court: Was that on there when you showed it to Mr. Hollifield?

The Witness: It was on the other side of the card.

The Court: It was on the card when you showed it to Mr. Hollifield?

The Witness: Yes, sir. It was on the other side of the card. Yes, your Honor.

The Court: The other side depends on which side you are looking at.

The Witness: That is right.

The Court: So, read what is on that so-called other side.

The Witness: (Reads) "Article of War No. 24. Compulsory Self-Incrimination Prohibited. No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, or before any officer, military or civil, designated to take a deposi-

tion to be read in evidence before a military court, commission, court of inquiry, or board, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him or to answer any question not material to the issue or when such answer might tend to degrade him.

"The use of coercion or unlawful influence in any manner whatsoever by any person to obtain any statement, admission or confession from an accused person or witness, shall be deemed to be conduct to the prejudice of good order and military discipline, and no such statement, admission, or confession shall be received in evidence by any court-martial. It shall be the duty of any person in obtaining any statement from an accused to advise him that he does not have to make any statement at all regarding the offense of which he is accused or being investigated, and that any statement by the accused may be used as evidence against him in a trial by court-martial."

Q. Now, Mr. Noble, was there any other preliminary discussion with Mr. Hollifield on that occasion?

A. Yes. After he had stated that he understood the contents of the card, he was told that he didn't need to answer any questions which would tend to incriminate him or that he was entitled to a lawyer and if he wanted to get an attorney the interview would be suspended until such time as he could obtain one and should an attorney be obtained he would be welcome to sit in on the interview and he was told at the time that any statement that he may make, may be used in evidence against him.

Q. Now, what, if anything, did he say?

A. Well, he said at the time, he says, "I have nothing to hide, so just go ahead with the interview."

Q. All right. Now will you proceed then to relate the substance of the conversation which you had with him on that occasion?

A. Well, I began questioning him about these allegations as to gratuities and moneys from various contractors

or contractors' representatives and specifically I questioned him as to acceptance of money from William J. Opper, a surplus property dealer in Chicago. I told him I had heard he had been getting a commission on every pair of goggles that Opper was selling to these contractors, due to the fact that he had been instrumental in having these goggles approved.

Mr. Kelley: Excuse me, Mr. Witness. Your Honor, would you admonish the jury?

The Court: I was waiting to the point where Mr. Opper was going to enter. I intended to do that.

Q. You may proceed.

A. Then Mr. Hollifield told me that he had met Opper about nine months—about a year previous to that time, which would have been—

The Court: Stop right there. Now, Members of the Jury, I want to instruct you at this time, I can't make my instructions too forceful. It is very important that you keep in mind what I am about to tell you. Perhaps it is rather difficult to be able to do so, but it is one of the duties that you will have to perform to the very best of your ability. In any statement that Mr. Hollifield, the defendant Hollifield may have made to this witness or any other witness, if we reach that stage wherein he mentions Mr. Opper, defendant Opper, you must not, in the absence of Mr. Opper, that is, this office where Mr. Opper was not present,—And he wasn't present, was he?

The Witness: No, sir.

The Court: When Mr. Hollifield, defendant Hollifield makes any statement by way of admission or confession, or whatever you please to call it, as to himself Hollifield, you may consider all of that testimony along with all the other testimony in the case in arriving at your ultimate conclusion and verdict, but you must not consider as evi-

dence in this case as against the defendant Opper anything that may have been said by the defendant Hollifield in Mr. Opper's absence. This testimony is the statement by way of admission or confession, whatever you please to call it of Mr. Hollifield and it applies to Mr. Hollifield alone and exclusively, to nobody else.

So, if in the course of this testimony, the name of Mr. Opper, defendant Opper is mentioned, you may not consider that and must not consider that as any testimony whatsoever as against the defendant Opper. You may consider it for whatever you think it may be worth as to its weight and so forth as against the defendant Hollifield.

Nobody has the right to confess, if you call it a confession, for somebody else. It is all right to talk about themselves, but they cannot make some admission about somebody else who isn't present, at any event, and Mr. Opper was not present on this occasion.

Now, please remember that. It is very important in this case. That principle must not be lost sight of and I instruct you now and I will instruct you later on, if we reach that stage in the trial, but right now I tell you in advance so there cannot be any question, what the Court is trying to impress upon you as forcibly as I can, because that is the law, and the defendant Opper is entitled to the benefit of that law, it is a shield thrown around him in this case, that he is entitled to and it must not be taken away from him. Anything that the witness testifies to that Mr. Hollifield said about himself you may consider along with the other testimony in the case and give it such weight as you deem it properly deserves.

Now, with that understanding, you may proceed.

Mr. Richter: Miss Fischer, will you read the last few sentences of the witness' testimony, so he can pick up his train of thought?

(Thereupon the last answer on the top of p. 90 was read by the reporter.)

Mr. Richter: Now you may proceed.

A. (Continued) That would have been the latter part of September 1950 and then he stated that during November 1950 Mr. Opper came in to Hollifield's office at the Aero Med. Laboratory and told him that if he, Hollifield, could have the goggles, some ski goggles approved so they could be used as a component in the survival kits that he would give him $1750. Hollifield stated that he agreed to the arrangement and pursuant to the arrangement he did submit Opper's goggles to the laboratory and had them approved, and that sometime on or about the middle of April, I think it was, 1951, he received a thousand-dollar payment from Mr. Opper in payment on the $1750. Then he stated that sometime in July, or about, I think three months prior to that, that he had received an additional $200.

Q. What year was that?

A. That was 1951.

Q. 1951?

A. That's right. He received an additional $200 from Mr. Opper but that he had not received the additional $550 that was promised.

Q. Anything else that you can recall?

A. When Mr. Hollifield gave this information, I decided to terminate the interview and reduce the subject to a written statement and I asked him if he would be willing to have the matter reduced to a written statement and he said yes, that he would be willing to. I asked him if he would sign the statement and he said yes.

Q. What was done then?

A. Then I called in a stenographer and began dictating the statement, with the help of Mr. Hollifield. We both dictated the contents of the statement and after the statement had been dictated and typed, it was submitted to Mr. Hollifield, who read it over and made corrections before he signed it and then he signed it.

Q. How were those corrections made?

A. Those were made by ink and they were made in Mr. Hollifield's own handwriting.

Q. Will you state whether or not Mr. Hollifield signed the typewritten statement?

A. Yes, sir, he did.

Mr. Richter: Mark this for identification Government's Exhibit 37.

Thereupon a statement made by defendant Hollifield was marked for identification as Plaintiff's Exhibit No. 37.

Q. I will hand you Government's Exhibit 37 and ask you—

The Court: For identification.

Mr. Richter: Oh, yes.

The Court: Better show it to counsel.

Mr. Richter: Oh, yes. All right.

Mr. Kelley: May we approach the bench?

The Court: Now, Members of the Jury, counsel would like to have an opportunity to examine this document, which I think they should have, of course, and it is suggested, perhaps, I would adjourn until quarter past 2 and give them a chance to not only go over the document but give them a little opportunity to get their lunch too. So now, I will recess the further hearing of this cause until 2:15 this afternoon. During this interval you will bear in mind my usual admonition and return here, if you please, at quarter past two this afternoon.

Adjourn court until 2:15.

Thereupon the further proceedings in this trial of this cause were adjourned until 2:15 o'clock of the afternoon of the same day.

Afternoon Session.

Tuesday, May 20, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

MR. MONCURE NOBLE resumed the witness stand and testified further on **direct examination** as follows:

By Mr. Richter:

Q. Mr. Noble, I will hand you Government's Exhibit No. 37 and ask you if you can identify the handwriting that appears thereon, in every place in which it does appear?

A. Yes, sir. This is the signature of Mr. Hollifield, myself and John Collins.

Q. Those are the signatures?

A. Those are the signatures and the writing in the body of the contract—I mean in the statement, is that of Mr. Hollifield.

Q. The handwriting of Mr. Hollifield?

A. That's right.

Q. Was that signature of Mr. Hollifield and the other handwriting of his put on there in your presence?

A. Yes, sir.

Mr. Richter: If the Court please, at this time, we offer in evidence the statement, Government's Exhibit 37, to the extent that it has not been deleted or covered over.

The Court: I think if any part of it is going to be deleted, perhaps, it should just be marked for identification and so much of it, of that statement as the government wishes to offer in evidence may be read to the jury, as a part of the record in this case. I don't think if you are going to delete a part of it that the instrument should go in as an exhibit.

Mr. Richter: All right. We will proceed according to that arrangement, if your Honor please.

The Court: Counsel may read—either counsel may read it or the witness may read it, so much of that statement which has been signed by Mr. Hollifield, as I understand, according to the witness' testimony,—so much of that as the government wishes to offer into evidence, as a part of the statement, I understand, the government feels is not pertinent or relevant in this case and they have deleted it. That is all right, if you wish to do that. I am not going to tell the government what they should put in evidence or what they should leave out, but I think there is some question about the deletion. The government should put into evidence only so much of that exhibit as the government wishes to offer, but the instrument should stay here marked for identification so that counsel for defendants may have the right to cross-examine from it, if they wish to do it.

Mr. Richter: That is our purpose, if the Court please.

The Court: Very well.

Q. Mr. Noble, will you read—

Mr. Svoboda: If your Honor please, I would like to object to submission of this in evidence on the same grounds that were stated in the memorandum that was submitted to the Court—this oral statement from the confession as submitted on the same grounds that were submitted in our memorandum.

The Court: I understand that.

Q. Mr. Noble, will you read from this confession of Robert George Hollifield, Sr., the parts thereof which have not been obliterated?

The Court: I think we better get that straight. There has been no part of that obliterated.

Mr. Richter: Well, the part which the government desires to offer in evidence.

The Court: There has been a blank page put over part of it. If the government doesn't care to offer that, they

don't have to offer it. You read from that document so much as the government offers in evidence.

Mr. Svoboda: I would like to object to the word "Confession".

The Court: Read from the document marked Government's Exhibit 37 for identification, whatever it may be, just read from that. That is what we are—the best way to refer to it here is by exhibit number, I think, Exhibit No. 37 for identification.

A. (Reads) "I, Robert George Hollifield, Sr., residing at 2053 Arlene Avenue, Dayton, Ohio, prior to making the statement contained in the following paragraphs, have had explained to me my rights under the Fifth Amendment to the Constitution of the United States by Special Agents Moncure Noble and Laurence Collins, who have identified themselves to me as Agents of the Office of Special Investigations, U. S. Air Force. I understand that I do not have to make any statement, that any statement I do make may be used against me in a court of law, and that I have the right to have an attorney. With such an understanding, I voluntarily and of my own free will, make the following statement:

"I am presently employed as Chief, Land Survival Unit, Medical Specialty Branch, Aero Medical Laboratory, Wright Air Development Center, Wright-Patterson Air Force Base, Dayton, Ohio. In my present position I supervise other engineers in the unit and assist the project engineers in their work. I am authorized to make decisions and directing policy of my unit. I am also authorized to prepare kit specifications and approve deviations thereof.

"I have been asked whether or not I am acquainted with a William J. Opper, Chicago, Illinois. I wish to state that I have known Mr. Opper for about a year. Mr. Opper is a dealer in surplus property, particularly ski goggles of the type used in Air Force survival kits. Approximately nine months ago Mr. Opper called at my office in the Aero Med-

ical Laboratory and offered to pay me the sum of $1750 provided I would submit his surplus goggles to the Vision Unit, Physiology Branch, Aero Medical Laboratory and arrange to have them approved and accepted by the Air Force as an acceptable component of survival kits. I agreed to do this and in accordance with this agreement samples of these goggles were submitted to the above branch and after testing said goggles I arranged to have it determined that while these goggles did not meet the original specifications they would generally serve the purpose and could be used in the kits under procurement at the time. Approximately five months ago I received a payment of $1000 cash from Mr. Opper, pursuant to our agreement, and about the middle of July 1951 I received an additional payment of $200 cash from Mr. Opper. I haven't received any additional payments from Opper since that date. During my last contact with Opper, which was approximately 15 July 1951 at the time I received the above $200 payment Opper advised me that I was to receive approximately $1750. However, as stated above, I have not received the additional $550. I would like to make this point clear. I would have submitted goggles presented by any contractor for analysis, regardless of whether or not any consideration had been promised me, particularly when it required a deviation from the original specifications. I would like to further state that the goggles submitted by Opper, while not in accordance with the original specifications, did meet the requirements or purposes for which they were intended. Furthermore, I would like to state that in my mind, in the above transaction, that I did not in any manner make an effort to accept inferior equipment which the Government was procuring.

"I would like to state that the above should not be construed to mean that any allowance of deviations was only to obtain gratuities, money or gifts, but in the performance of any duties or reasonable requests, and I would have acted upon as such for any contractor or prospective contractor.

"I have read this statement consisting of three pages and it has been read to me. I have initialed all preceding pages and corrections."

It is signed "Robert George Hollifield, Sr." And it was sworn to and subscribed before me the 26th day of September, 1951, and signed by myself; witnessed by Laurence Collins.

Mr. Richter: If the Court please, I think the witness read "performance of any duties" when he should have read "performance of my duties" during the course of the reading.

The Court: Point it out.

Q. Where is this "performance of my duties"?
A. "Performance of any duties".

Mr. Richter: "Any duties" is correct

Mr. Kelley: If the Court please, having read it once, I believe the witness should read the entire sentence in its correct form.

Mr. Richter: He has indicated the form in which he read it was the correct form. I thought it should be "my duties" and it should be "any duties".

Mr. Kelley: Your Honor, this morning to the fullest extent did admonish the jury concerning the fact that any statement of Hollifield may be considered only against him and not against Opper. Out of an abundance of precaution, may I request that the Court instruct the jury further that that holds true not only as to oral statements but as to written statemens of this kind as well?

The Court: Yes, it does, Members of the Jury, whether oral statement or written statement. Mr. Hollifield, defendant Hollifield, can make the statements or confessions—They don't particularly like that word. I don't like it myself. I don't know how else to express it, hardly. He can only make those as against himself. He can't make

a confession as to somebody else, no more than somebody else can confess my sins, or your sins, or anybody else's. We have to confess our own when the time comes. So that is the way it is here. I tried to impress on you and do again, this testimony is directed against the defendant Hollifield only and must be considered by you as against Mr. Hollifield, defendant Hollifield only whether it be by way of oral conversation or whether it be in writing.

Mr. Richter: You may have the witness.

Cross-Examination, by Mr. Kelley.

Q. How long, Mr. Noble, have you been Special Agent in the O. S. I.?

A. Since the 2nd of July 1951.

Q. And at the time that you had this conversation with Mr. Hollifield you had then been Special Agent how long?

A. From July until the 26th of September.

Q. What had been your occupation prior to becoming Special Agent?

A. I was special agent with the U. S. Department of Agriculture and War Assets Administration.

Q. How long had you held that position?

A. Since May 7, 1941.

Q. What was your occupation before that?

A. Before that I worked as a salesman, appliance salesman in a department store.

Q. Are you an attorney-at-law?

A. I am a graduate of law. I am not an attorney. I never took the Bar.

Q. Have you ever been admitted to practice in any state at all?

A. No, sir. I never took the Bar.

Q. What time of day did Mr. Hollifield arrive at your office?

A. 9:30 in the A. M., in the morning.

Q. How long was he kept there?

A. Well, I was through with him about 4 o'clock in the afternoon.

Q. You say you were through with him about 4. My question was not about when you were through with him. Do you remember my question?

A. How long I kept him.

Q. How long was he kept there in your office, was my question.

A. Well, I turned him over to the F. B. I. at 4 o'clock and I don't know how long they kept him there, because I left about 5.

Q. You turned him over to the F. B. I.?

A. Yes, sir, I did.

Q. You mean you passed down the custody of him to the F. B. I.?

A. No. I mean upon receiving of the statement indicating a violation of the Federal Statute, the F. B. I. was notified and they sent out agents and Mr. Hollifield was introduced to the agents of the F. B. I., Mr. Pardo and Mr. Landis.

Q. At or about the time that you had him sign that statement did you or did you not tell him that when he signed it he could go home?

A. No, I didn't tell him that.

Q. Who was your assistant or associate?

A. Mr. Collins.

Q. Do you know whether he made that statement to him or not?

A. No, because I talked to Mr. Hollifield last.

Q. Let's see. You say you had him in your custody from 9:30 in the morning until when?

A. About 4 in the afternoon.

Q. Did he go to the toilet room during that time?

A. Several times.

Q. Did anyone go with him into the toilet room?

A. Yes. I went with him once.

Q. Why?

A. Well, I wanted to go, so I went.

Q. Did you consider him under arrest?

A. No, sir. I haven't the power of arrest.

Q. Why did you follow him in the toilet room?

A. As I told him, because I wanted to go also.

Q. Only for that reason?

A. Yes, that is all.

Q. Was that true on more than one occasion that you had the joint desire?

A. I only went with him once. I don't know whether he went more than that or not. I don't think he did.

Q. Do you know how long the F. B. I. detained him there after you turned him over to the F. B. I.?

A. No, sir.

Q. Did you take him out to a meal?

A. We did. At 12:10 we had a box lunch brought down from the cafeteria and we ate in the interviewing room, in the interrogation room.

Q. You think it was 12:10?

A. That is right.

Q. Did you keep a log?

A. Yes.

Q. Where is your log?

A. In my pocket.

Q. Would you produce it?

A. (Witness produces log.)

Q. Your hands are shaking, sir. Are you nervous?

A. Yes, I am a little nervous.

Q. Was Mr. Hollifield nervous during the hours you interrogated him?

A. I imagine he was. He didn't say.

Q. Did you make any promises to Mr. Hollifield?

A. No.

Q. Of any kind?

A. None whatsoever.

Q. Did you threaten him?

A. No, sir.

Q. You are not supposed to do that, are you?

A. No, sir. You will find the three first pages of those are the notes I made in preparation of the interview.

Mr. Kelley: May these be marked for identification, please, Defendant's Exhibit E?

Thereupon said log was marked for identification as Defendant's Exhibit No. E.

Q. Is that known as a detainer log?

A. No. That is the notes I made on the interview.

Q. Didn't I ask you a moment ago if you kept a log or not, and didn't you say yes?

A. I kept a record.

Q. Do you recall my using the word "log"? Don't you?

A. I don't recall that. We don't keep a log. I keep my notes.

Q. So your testimony is, you don't know what I mean by a detainer log?

A. No. If you said that, I didn't understand it that way.

Q. You didn't understand me to use the word "log"?

A. I understand the meaning of the word "log" but I don't remember your saying that.

Q. You don't remember my saying "Did you keep a log?"

The Court: May I see that, please? I will give it a name.

Mr. Kelley: I should like to test this witness' recollection.

The Court: "Agent's Notes" I will put on my docket. Just something to identify it, Gentlemen, that is all I asked for.

Mr. Kelley: The purpose of my examination is also general. I wish to know the—to test the agent's recollection, his accuracy on the stand.

The Court: Certainly.

Q. I asked you sometime ago whether you observed that Mr. Hollifield was nervous during any part of this many hours' interrogation. Did you observe anything indicating he was?

A. No, I didn't.

Q. Did you notice whether he was perspiring at all?

A. No, no I didn't. We had a fan in the room.

Q. You handed him a card that you identified this morning and asked him to read it?

A. Yes, sir.

Q. In addition to that you orally advised him of his Constitutional rights; is that correct?

A. I orally advised him of his rights, certain rights, yes, sir.

Q. Was that also done by Mr. Collins?

A. No. I did that, but Mr. Collins was present.

Q. Now, as to your question of how long he had known Mr. Opper, how did he respond to that?

A. Yes, sir. He stated that he had known Mr. Opper since, I believe it was September 1950.

Q. You didn't testify to that before on your direct examination, did you?

A. Yes, sir.

Mr. Richter: Object.

Q. In so many years?

Mr. Richter: The witness did testify that.

Mr. Kelley: No, he didn't.

Mr. Richter: Refer to the record.

Q. Didn't you in your direct examination say, in response to that question by you he said about a year?

A. That was on the—We asked him the question. He said in about September 1950. But when we were dictating the statement, Mr. Hollifield wanted that changed to "about a year".

Q. I am asking now, don't you recall testifying this morning that he said about a year, which would be about September?

A. I think I said it was about September 1950.

Q. How long have you known Mr. Aug?

A. Who?

Q. Mr. Aug. About how long have you known him?

A. I met him about last week.

Q. About last week?

A. I met him last week.

Q. Is it your testimony that Mr. Hollifield said that he had known this man since September, or was it a presumption?

A. That is what he said. He said he had known him from about September 1950.

Q. Are you using the word—I can't hear you.

A. He said he knew him since about September 1950.

Q. He didn't use the expression "about a year ago" then?

A. Later on in the statement he did, but at the time I questioned him he said "about September 1950".

Q. Did you ask Mr. Hollifield about other transactions other than Mr. Opper?

A. Yes, I did.

Q. Did you at the time you turned him over to the F. B. I. agents show him this statement you identified?

A. I furnished them a copy of it.

Q. At that time?

A. Yes, sir.

Q. I am referring to that portion of the statement which you read which recites, "I would like to make this point clear. I would have submitted goggles presented by any contractor for analysis, regardless of whether or not any consideration had been promised me, particularly when it required a deviation from the original specifications. I would like to further state that the goggles submitted by Opper, while not in accordance with the original specifications, did meet the requirements or purposes for which they were intended. Furthermore, I would like to state that in my mind, in the above transaction, that I did not in any manner make an effort to accept inferior equipment which the Government was procuring. I would like to state that the above should not be construed to mean that any allowance of deviations was only to obtain gratuities, money or gifts, but in the performance of any duties or reasonable requests, and I would have acted upon as such for any contractor or prospective contractor." Was that statement made to you in the presence of Mr. Collins?

A. This particular part of the statement was dictated by Mr. Hollifield himself in the presence of Mr. Collins.

Q. And yourself?

A. Yes, sir.

Mr. Kelley: Your Honor, I don't like to waste time but may I be given a few moments to examine into this document?

(Confers with co-counsel.)

Q. Do I understand, Mr. Noble, having reference to Defendants' Exhibit E for identification that you either prepared these notes in anticipation of this interview with Mr. Hollifield or during the course of that interview? Is that right?

A. I prepared those notes during the course of the interview.

Q. All of them?

A. Yes, sir, all of them.

Q. What date did you hold that interview?

A. 26th of September.

Q. What date appears on here, on the first page?

A. I am informed here—

Q. Answer my question.

A. 25th of September.

Q. All right.

A. Those are the notes I prepared to interview him by.

Q. Don't you recall just two minutes ago my asking you as to the notes here, were they not prepared by you in anticipation of this interview *or* during the interview?

A. This was. The first three pages there was prepared on the 25th. I was anticipating the interview and I prepared notes covering the allegations. That I did so when I talked to him I would have in mind what I wanted to talk with him about.

Q. It was for the purpose of conducting this interrogation of Mr. Hollifield?

A. That is right, those first three pages.

Q. They all appear in your handwriting?

A. Yes, sir.

Q. One more question. You recall a few moments ago, Mr. Noble, that I read certain passages from this document, Plaintiff's Exhibit 37. I think you said those passages were dictated by Mr. Hollifield.

A. That's right.

Q. Did he dictate the balance of it?

A. He helped dictate the balance of it.

Q. What do you mean by "helped dictate the balance of it"?

A. I went over n.y. notes with him. In dictating the statement, I would dictate a line to the girl, to the stenographer and if it didn't exactly suit him, or anything wasn't exactly right, he would change it the way he wanted it.

Q. You undertook to dictate from your notes to the stenographer; is that right?

A. Well, yes. The two of us we went over the notes together. We went down to the office and dictated the statement and in dictating the statement if I stated something that Mr. Hollifield felt he didn't want in the statement, then he corrected it and dictated it the way he wanted it.

Q. Do you know where Mr. Collins is now?

A. He is somewhere in Cincinnati. His home address I don't know.

Mr. Kelley: That is all.

The Court: Did you Gentlemen wish to ask any questions on behalf of Mr. Hollifield? I mean by "you Gentlemen" Mr. Svoboda and Mr. Meyring.

Mr. Svoboda: No, sir.

Mr. Meyring: No, sir.

Redirect Examination, by Mr. Richter.

Q. Would you make the sequence of events a little clearer as to what occurred after you started the interview? How long was it after you started the interview that the statement was dictated?

A. I started the interview at 9 and it was terminated at about 11 and we started dictating the statement at about 11 until, I think it was about a little bit after 12.

Q. And what did the defendant Hollifield do while the statement was being dictated or typed?

A. We had lunch and he sat in the office there and we talked.

Q. Did you question him about anything during that interval?

A. The only thing I was just—I just asked him whatever made him do it. He said: Well, he didn't know. He guessed he didn't have any scruples.

Q. Then you had lunch after that; is that right?

A. Yes, sir, that's right.

Q. What happened after lunch?

A. After lunch we waited for the statement to be typed up and when the statement was typed up it was presented to Mr. Hollifield and it was read to him. Then it was presented to him for him to read it and to make any corrections he wanted on it and there was six copies of these statements and it took quite a long time to read each and every one and make identical corrections on each one. I might say shortly after the termination of the interview at 11 o'clock, I think it was, I told my supervisor Mr. Braun—

Mr. Kelley: Don't tell us what you told your supervisor.

The Court: Don't tell what you told your supervisor. What did you do?

A. (Continued) I informed him of the—

The Court: No.

Mr. Richter: Just state what you did.

The Court: You told something to Mr. Braun; is that right?

The Witness: That's right.

Q. Then what?
A. He called the F. B. I. and—

Mr. Kelley: Just a moment. I don't know who he is talking about, he.

The Witness: Mr. Braun called the F. B. I.

Mr. Kelley: I object to what Mr. Braun did.

The Court: Were you present when he did that?

The Witness: Yes, sir, I was present.

The Court: Go ahead.

A. (Continued) And he called the Cincinnati office of the F. B. I. and asked them to send out some agents, which they did, and upon the completion of the corrections and the signing of the statement, which was about 4 o'clock in the afternoon, Mr. Hollifield was introduced to Mr. Pardo and Mr. Landis of the F. B. I.

Q. Will you read to the jury the handwriting appearing on the first page of Government's Exhibit 37?

Mr. Kelley: If the Court please, this has already been read to the jury by this witness on direct examination.

The Court: Go ahead. Overrule the objection. He may read what is in the handwriting.

A. "I am also authorized to prepare kit specifications and approve deviations thereof."

Q. Who wrote that?
A. Mr. Hollifield.
Q. Was it his language, his composition?
A. That's right; that is his language.

Mr. Richter: We are through with the witness, if your Honor please.

The Court: Will the witness Collins be called?

Mr. Richter: We don't intend to call Mr. Collins. It would be merely cumulative.

The Court: All right. I don't care. I want to ask a question, but I don't want to do it until I find out about it. Now, before we adjourned this noon, counsel for defendants and for the government approached the Bench here. I don't know whether this appears exactly, or what was stated at that time, but this is what took place I am very sure counsel will say: Counsel for the government had this document now marked Government's Exhibit No. 37 for identification. Mr. Kelley asked we adjourn. It was almost adjournment time. We adjourned at that point until quarter past 2 to give counsel an opportunity to examine what is Exhibit 37 for identification. The Court said that was quite proper. Counsel for the government then said that these parts that are deleted are not permanently deleted, but just by the putting on of white paper with brads across certain portions of Exhibit 37 for identification, and that it was agreeable for counsel for defendants to read all of Exhibit 37, including those portions that were deleted.

Now, is there any exception to what I have said, or any modification or difference of opinion, as to what was said at that time? If so, I would like to have it pointed out.

Mr. Kelley: I think there was perhaps more said, but I agree with your Honor with so much of what your Honor has said.

The Court: What I have stated is correct?

Mr. Kelley: Yes, so far as it goes.

The Court: I don't know whether counsel for defendants had an opportunity to look at so much of these statements as have been temporarily deleted, and if they did not have that opportunity, I am going to take a recess now to give you the opportunity to do that.

Mr. Kelley: May it please the Court, we haven't reached the stage where the defense is putting in any case, of course, and I think that your Honor also stated from the Bench this morning, in a Bench conference, in addition to

what you have said that the defense at any time would have the opportunity, if it so desired, to call the Court's attention to any other portion in here which it felt was relevant or worthy of the Court's attention, and, of course, we still possess that right. Of course, we aren't putting any case in and at the proper time we will want to call the Court's attention to some other parts in there.

The Court: Before the witness Noble is excused I want to give the defendants an opportunity, if you care to take it, to cross-examine him about anything that appears in Exhibit 37 for identification that has been deleted.

Mr. Kelley: Of course, whatever has been deleted hasn't been offered. There has been no offer of that part, your Honor.

The Court: I know, but if you want to cross-examine him about it, you may do so now, any of you Gentlemen.

Mr. Kelley: Your Honor, I do not conceive either the desire or propriety of my cross-examining this witness on something not in evidence and not before this Court. However, I should not want to foreclose the right, if the ends of justice indicate it proper, that he might not be called at another time as a witness for the defense, to go into these other portions. We desire, at the proper time, also to view these other portions of this document.

The Court: All right.

Mr. Richter: The only thing, that is not pertinent to your question. Did the defense have an opportunity to investigate the instrument? I believe the answer to that question is, they did.

Mr. Kelley: We did.

The Court: All right. You may be excused.

Mr. Svoboda: May we have a recess?

The Court: We don't want to take so much time for recess. We did not start until almost half past two. I have

no objection, but we take so much time when we recess. I don't think we make much progress. We will take a little recess for five minutes. Counsel wait a minute.

Thereupon the jury retired from the court room and the following proceedings were had in the absence of the jury:

(Counsel confer with the Court at the Bench, off the record.)

The Court: I want to talk to Mr. Richter and Aug about a matter that has nothing to do with this case. However, I will be very glad and much prefer if one of you Gentlemen representing each one of the defendants would come into my chambers. I will take advantage of this recess now to talk to them about another case.

Mr. Canny: Well, Judge, I think that in our experience with you, what you just said is enough for me.

The Court: We have a case set for tomorrow and all the jurors are ordered in and there was a question of whether the case was going to be tried or not. I just learned this afternoon it will have to be tried and I want to talk to these Gentlemen about what date we could set succeeding this case as to go forward.

Mr. Canny: Perfectly all right.

The Court: I didn't want to have them come in to talk about it and have counsel think that I was talking to one side in the absence of the other. So, if you will come in, or just come here, Mr. Richter and Mr. Aug, I will talk to you right here.

Thereupon a five-minute recess was had. And thereupon the jury returned into the court room and the following proceedings were had in the presence of the jury:

Testimony of Clay W. Pardo

MR. CLAY W. PARDO, being duly sworn, testified as follows:

Direct Examination, by Mr. Richter.

Q. Will you state your full name, please?

A. Clay W. Pardo.

Q. Where do you live, Mr. Pardo?

A. I live in Cincinnati, Ohio, at 1332 Lamar Drive.

Q. What is your occupation?

A. I am a special agent of the Federal Bureau of Investigation.

Q. How long have you been engaged in that occupation?

A. It is a little longer than ten and a half years.

Q. Have you ever met the defendant Robert George Hollifield in this case?

A. I have.

Q. Can you identify him in this court room, by stepping down and placing your hand on his shoulder?

A. Yes, I can.

Q. Will you do that, please?

A. (The witness does as requested by counsel.)

Q. All right. Have you ever had any conversations with Mr. Hollifield?

A. Yes, I have.

Q. When?

A. September 26, 1951.

Q. And where was that?

A. That was at Wright-Patterson Air Force Base, in the office of the Office of Special Investigation, Fifth District.

Q. Who was present at the time, besides yourself and Mr. Hollifield?

A. Another agent of the Federal Bureau of Investigation, Jack Landis.

Q. And what time of the day was it?

A. This was in the afternoon. We started talking to him, it was approximately 4 o'clock or about five minutes after four when we actually started.

Q. How did you happen to come to Dayton for that purpose?

A. I was already in Dayton and I got a call from my superior in Cincinnati to go out there to the Office of Special Investigations.

Q. When you did start to talk to Mr. Hollifield will you tell the Court and Jury what preliminary statements or conversations took place?

A. When I first met Mr. Hollifield in the Office there, I told him who I was and that I was connected with the F. B. I. I also told him that he didn't have to make any statements to me; he had the right to have an attorney if he so desired and I told him that I wanted him to understand that anything he said might be used against him.

Q. What did he say in response to that, if anything?

A. Well, he told me that he didn't have any objections to talking to me; that he already had made admissions to the O. S. I.

Q. Will you relate to the Court and Jury the substance of your conversation with Mr. Hollifield on that occasion?

A. Well, I first asked him some questions as to his position at Wright-Patterson Air Force Base and he told me that he was a designer in the land survival unit, which was a part of the Aero Medical Laboratory. He told me that he was a project engineer on a survival kit known as the E-1 kit and he told me he had assisted in developing other kits.

Q. Anything else?

A. Yes. Then I asked him about whether or not he knew a person by the name of William Opper and he told me he did. I asked him when he had met Mr. Opper and he told me he couldn't remember the exact date or the place, but it was about a year prior to our conversation on September 26, 1951. So, I asked him other questions concerning his relationship with Mr. Opper, how long he had known him, and he still couldn't remember the exact time he first met him, and he told me that sometime after

he first met him that Mr. Opper came to his office in the Aero Medical Laboratory, at Wright-Patterson Air Force Base.

Q. Pardon me, Mr. Pardo. About when was that? Did he indicate about when it was?

A. Well, he said he couldn't recall the exact date, but it was after he first met him and he told me that the best he could recall, it would be sometime around the first part of the year 1951.

Q. Then what was said?

A. Then he said at this time William Opper told him that he had some goggles that he would like to sell to the government and that he knew that some of these goggles would meet the government specifications and he knew that others would not meet the specifications, and also that by just looking at the goggles you couldn't tell one from the other, from visual inspection. Mr. Hollifield continued that he and Mr. Opper went into a supply room, which was near Hollifield's office, and in this supply room Opper told him that if he would accept these goggles he, Opper, would make it interesting to him, and the conversation continued. Hollifield said that there was some mention as to how much Opper would pay him for each goggle, but Hollifield said he couldn't remember what the price was, or how much Opper was to give him for each goggle, but he did remember that the total amount he was to get was $1750. Then he said that no money transpired at that time—no money passed hands at that time, and it was some time later, approximately, in April 1951 he called Opper from Dayton to—Opper was in Chicago at the time and then on a Saturday he flew or went by airplane to Chicago and there he went to Opper's office. He said when he got to Opper's office it was closed and he went down on the street near the entrance to the building and waited a few minutes and Mr. Opper came by and the two of them then went back up into Mr. Opper's office and there Mr. Opper gave him $1900 in U. S. currency. Hollifield continued by

saying that he then came back to Dayton from Chicago on this same Saturday, which he thought was in the month of April 1951, and around July 1951 Mr. Opper came to Dayton and while in Dayton Opper gave him $200. Now, Mr. Hollifield said that he couldn't recall where in Dayton that Mr. Opper gave him the money, but he knew that it happened either in Dayton or the vicinity of Dayton.

Now, at that time I questioned Mr. Hollifield as to whether or not Mr. Opper had given him any other money and he told me he had not and I also questioned him as to whether or not this $1200 that he had received was a part of the agreement or a part of the amount of $1750 that he was to get and he told me, yes, that that was a part payment of the $1750. I mentioned to him that, well, the difference then was approximately $550 that, according to his statement, he had not received, and he said that was right, but he had intended on getting this additional $550.

Q. Anything else?

A. Well, that is generally the—or at least briefly what he told me.

Q. Substance of it?

A. That is the substance of it, yes.

Q. Were these statements of Mr. Hollifield reduced to writing at that time?

A. Yes, they were.

Q. Who was present when they were reduced to writing?

A. Well, Mr. Hollifield was present and Mr. Landis from our office was present and I was present.

Q. Who reduced the statements to writing?

A. I did.

Q. Mr. Hollifield was present?

A. Yes, he was.

Mr. Richter: Mark this for identification as Government's Exhibit 38.

Thereupon a statement was marked for identification as Plaintiff's Exhibit No. 38.

Mr. Kelley: If the Court please, may I approach the Bench?

Thereupon the following proceedings were had at the Bench, out of the hearing of the jury:

The Court: Counsel for defendant have been handed a document marked Government's Exhibit 38 for identification, which purports to be a statement by the defendant Hollifield, written, as I understand, according to the witness on the stand, by the witness in Mr. Hollifield's presence. This document was signed by the defendant Robert George Hollifield, Sr., and sworn to as appears upon the document. Portions of this document have been temporarily deleted. By "temporarily" I mean that a white page has been placed over a portion of it with brads or staples,—office brads. However, everything that was there is still there and all that is necessary is to remove the brads and anyone reading it then can read the whole statement. Now, I understand that counsel for defendants would like for the court to recess now to give them an opportunity to examine this carefully before tomorrow morning. Is that right?

Mr. Kelley: Yes, your Honor.

Mr. Svoboda: That is correct, your Honor.

The Court: That is quite all right. I have no objection to that at all. I want the record to show, however, so far as the Court is concerned, counsel for defendants may read everything that is in this document marked as Plaintiff's Exhibit 38 for identification, everything that is written in there; I mean everything that is temporarily deleted. If the government offers the document in evidence, or wishes to read some of it in the record, of course, they only need to offer so much as the government wishes to offer, but the defendant may have the opportunity, if they wish, then to read any of it or any of the other parts in the record, if they care to. I suggested when

the other witness was here, Mr. Noble, that he be cross-examined about it.

Mr. Kelley: Surely defense can't read into evidence until it comes time to put in his case.

The Court: I thought afterwards counsel was right about that. I hate to have a witness go and then something come up later on. But he can be recalled, if the defendant wishes to recall him and so can this witness, with regard to anything that defendant wishes to offer in evidence, if such there be.

Now, at this time, the document is only marked for identification, you understand, and with that understanding, as far as the Court is concerned,—Has the government any objection to counsel reading all of it?

Mr. Richter: We might feel that we would object to some of it being irrelevant.

The Court: I understand you may raise the question whether or not it is relevant or not, if there is any portion offered in evidence, but do you have any objection to the defendant reading everything that is in there?

Mr. Richter: No, no.

The Court: It would be rather difficult for the defendant to know if there is anything they are going to object to. They are free tonight to read everything, whether deleted or whether it is not and then determine what they wish to do about it.

Mr. Kelley: Of course, it is my understanding that in a criminal case it would be improper for the defendant to offer anything in evidence until the government is rested.

The Court: You are quite right and I think you were right when the witness Noble was here. My only thought was—I was thinking about his going away and maybe you may want to cross-examine him. But I think you are right. After you brought my attention to it, I thought

you were correct. You can't cross-examine about something that is not in evidence, but later on, if you care to offer any of it, you may have the opportunity to do that, of course, that is, such portions as the government does not offer. Then if there is any question comes up about any part of it, I will cross that bridge when we come to it. Very well.

Mr. Svoboda: Thank you.

Thereupon the following proceedings were had in the hearing of the jury:

The Court: Members of the Jury, counsel for defendant wish the opportunity to examine this statement that has been now marked as Government's Exhibit No. 38 for identification and I think they should have that opportunity, of course. I know they should have it. It is almost our adjournment time and in order to give them full opportunity to go over it together, why, I am going now to recess the further hearing of this case until tomorrow morning at 11 o'clock. During this interval you will bear in mind my usual admonition and return here, if you please, at 11 o'clock tomorrow morning.

I may say, so you won't get confused about it, all of our other jurors are coming in tomorrow morning, too. I had them come back tomorrow because we had a case set to start tomorrow. We are always optimists over here. We always think we are going to be ready to go forward at a particular time, but now we will have to go forward with that case when we finish this. We can't try but one at a time. That is what I wanted to ask Mr. Aug about when we adjourned.

So, you may now be excused and return here, if you please, at 11 o'clock tomorrow morning. If you see those other jurors here tomorrow, don't be concerned about it. I will have to excuse them until sometime later. You may now be excused.

Adjourn court until 11 o'clock tomorrow morning.

Thereupon the further proceedings in the trial of this cause were adjourned until tomorrow morning at 11 o'clock.

Morning Session.

Wednesday, May 21, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

MR. CLAY W. PARDO resumed the witness stand and testified further on **direct examination**, as follows:

By Mr. Richter:

Q. Mr. Pardo, I will hand you Government's Exhibit No. 38 and ask you if that instrument was signed by Mr. Hollifield in your presence?

A. Yes.

Q. Will you point to the signature and identify it, please?

A. The signature is on the last page, approximately near the middle of the page.

Q. And what is the writing which appears beneath it?

A. Beneath the signature of Hollifield appears "Subscribed and sworn to before me this 26th day of September 1951" and I signed that "Clay W. Pardo, Special Agent, F. B. I." and it is also witnessed by Jack Warren Landis, who was with me, "Special Agent, F. B. I., September 26, 1951."

Q. Now, Mr. Pardo, will you read to the Court and the Jury the contents of this statement, except such parts as are temporarily marked out? Pardon me just a minute. (After conferring with co-counsel:) Proceed, Mr. Pardo.

If the Court please, we offer in evidence Plaintiff's Exhibit No. 38.

The Court: Yes. Well, at this time, we will leave it marked for identification and the witness may do what

you asked him to do, read now into the record so much of that statement as has not been temporarily deleted.

Mr. Kelley: For the record alone, may it show that the defendant Opper interposes the same objection that was put before the Court and which was argued here on Friday?

The Court: Oh, certainly. Yes, sir, and of course, the jury will understand that this is a statement, claimed at least, testified to be a statement by Mr. Hollifield, the defendant Hollifield. I explained to you yesterday, I repeat so there won't be any question about it, that everything that is stated, now going to be read from this alleged statement by Mr. Hollifield, you may consider in your determination of this case as against Mr. Hollifield, the defendant Holiifield alone. You must not—I can't say that too strongly to you—you must not consider anything that is said in this statement as testimony against the defendant Opper. Mr. Opper wasn't present—or, was Mr. Opper present when this was taken?

The Witness: No, your Honor.

The Court: All right. Then you must not consider anything that was said in the absence of the defendant Opper as testimony against him, but you can consider it and give it such weight as you think it properly deserves as against the defendant Hollifield, who is the defendant that is claimed testified to, at least, made this statement. Now, that has reference to this statement as well as the one I called your attention to yesterday.

Now, you may proceed. Read it loud, if you please.

A. (Reads) "Dayton, Ohio, September 26, 1951. I, Robert George Hollifield, Sr., make the following sworn statement voluntariiy to Jack W. Landis and Clay W. Pardo who have identified themselves to me as Special Agents of the Federal Bureau of Investigation. No threats or promises have been made to me. I have been advised of my right to counsel and that what I say may be used against me.

Testimony of Clay W. Pardo

"I am 37 years of age and reside with my wife and two children at 2053 Arlene Avenue, Dayton 6, Ohio.

"I am employed as a designer, Land Survival Unit, Medical Specialty Branch, Aero Medical Laboratory, Wright-Patterson Air Force Base, Dayton, Ohio. My duties as a designer included developing survival kits for the Air Force and I was the project engineer on a kit known as "E-1". I helped to standardize the "E-1" kit. I helped to write the specifications for this kit. I might say here that I made some mistakes in these specifications in that some of the material requirements turned out to be critical and hard to get. Some deviations we made in this regard at the request of contractors.

"Around the early part of 1951, William J. Opper came to my office about some ski goggles he was interested in selling to the government. Opper said some of the goggles he had met the procurement requirements and others did not but he could not tell them apart from visual inspection. In the supply room near my office, Opper said to me something like, 'If you can use them I can make it interesting for you.' He said he would give me so much for each goggle the government purchased but I do not recall this amount. I do recall that the total he agreed to give me was about $1750.

"Opper brought in a sample goggle and wanted to know if it was satisfactory. I had it tested and in my opinion it was satisfactory. I wrote to procurement and told them the sample goggle was acceptable.

"As a result of this agreement with Opper, I have received a total of $1200 from him. I received $1000 in cash around March or April 1951 or about five months ago. I went to Chicago and got this money from Opper in his office. Around July 1951, Opper was in Dayton, Ohio and gave me $200. There is nothing definite about when I was to get the balance of $550 but it had been my intentions to get it."

The following and conclusion of the statement was written by Hollifield himself after he had read the statement:

"I have read this page and four previous pages and to the best of my knowledge the foregoing is true and correct." Signed "Robert George Hollifield, Sr."

Q. What was the date of that statement, Mr. Pardo?

A. September 26, 1951.

Mr. Richter: You may have the witness.

Cross-Examination, by Mr. Kelley.

Q. As I understood your testimony, Mr. Pardo, yesterday, you have been a special agent with the Bureau for approximately ten and a half years?

A. That is correct.

Q. How long have you been assigned to the Cincinnati office?

A. Since January 24, 1949.

Q. Would you state again the circumstances which impelled you to go to the O. S. I. office at Wright Field and interrogate Mr. Hollifield?

A. Well, I was in Dayton, Ohio at the time I received a telephone call from my superior in Cincinnati asking me to go out to the O. S. I. office and talk to Mr. Hollifield.

Q. Did you, at that time, know who Mr. Hollifield was?

A. No, I didn't.

Q. To your knowledge, was he then a subject of an investigation?

A. I didn't know anything about it at that time.

Q. Where were you when you got that call?

A. I was in the resident agency office in this building.

Q. And who was your superior who called and directed you to go to the Field?

A. Alvin E. Ostelhoff, Special Agent, F. B. I., Cincinnati.

Q. He was then in charge of the Cincinnati Office of the agents within this immediate vicinity?

A. That is correct.

Q. Is Mr. Ostelhoff still with the F. B. I.?

A. No, he is not.

Q. He left the F. B. I. to take employment with Cappel-McDonald Corporation, didn't he?

A. Well, I understand he is with them. That is about all I know about it.

Q. When did he leave the F. B. I.?

A. I don't know the exact date. I can only give you an approximate date.

Q. Give us the approximate date?

A. Approximately November 1, 1951.

Q. Which would have been, roughly, a month after he directed you to interrogate Mr. Hollifield?

A. That is approximately correct.

Q. A month and a day or two. Do you recall during your interview with Mr. Hollifield precisely what he said, as to when and where he first made the acquaintance of Mr. Opper?

A. Why, he told me he couldn't recall where it was. He was it was approximately a year ago that he first met him, from the time I interviewed him.

Q. You have interviewed many men and women in your time, I presume?

A. Yes.

Q. Where the phrase was used "approximately a year ago," do you, as an investigator, accept that to be an indication of an exact date, or a wide approximation?

A. I didn't understand all of that question.

Mr. Kelley: Read the question.

(Thereupon the last Q. was read by the reporter.)

A. Well, I attempted to get as nearly a correct date as I could. Mr. Hollifield stated he couldn't give me that date and that was all I had was an approximation and that was all I could get from him.

Q. Now, aside from being refreshed by the contents of the document from which you just read excerpts, do you have an independent recollection of when it was, that is, the time that Mr. Hollifield said that an agreement was reached between himself and Mr. Opper concerning the payment of $1750?

A. Well, there again he was very indefinite as to the time and he said he couldn't remember the date, but the best he could do would be around nine months prior to the time I talked to him, which would be as he put it sometime around the first of the year 1951.

Q. In other words, around the first of the year, that would be somewhere in the month of January of 1951?

A. Well, that was the best that he said he could do.

Q. But that is the date we are talking about now, when he indicated to you that an agreement was made, a proposal, acceptance and an agreement for the payment of $1750?

A. Yes.

Q. Around January 1, 1951, around there?

A. He said that was the best of his recollection, at that time.

Q. And as to the subsequent meeting, I think you said Mr. Hollifield told you he went to Chicago and got some money?

A. That is correct.

Q. Now, what was said as to the date of that visit?

A. Well, he told me again that he couldn't recall the exact date; that he thought it was somewhere around five months prior to the time I talked to him and I asked him, "Well, would that be around April?" And he said, yes, he thought it would be around the month of April 1951.

Q. Do you have any knowledge as to an exact date, knowledge acquired from any source whatsoever, as to an exact date upon which he went to Chicago and received money?

A. I don't of my own knowledge. I have through hearsay information.

Q. Is that hearsay information such as to definitely establish a date that money was received?

A. Well, I have information of the day he went out there and received the money.

Q. You have information that he went to Chicago; isn't that right?

A. Yes.

Q. Do you have information where he went in Chicago, other than what he may have told you in his statement?

A. No, I don't.

Q. So, you know he went to Chicago but you don't know where he went from any source?

A. That's right, only what Mr. Hollifield told me.

Q. You know he returned from Chicago to Dayton; isn't that right?

A. That is what he told me.

Q. Didn't you undertake to investigate the air lines to determine the evidence of the trip to Chicago?

A. I would like to state that I did not handle this investigation.

Q. It was handled by some other agents?

A. Yes.

Q. You have substantially told this Court and Jury the results of your own investigation in this case then?

A. That is correct.

Mr. Kelley: That is all.

Mr. Richter: You may be excused, Mr. Pardo.

The Court: That is all.

EDWARD C. SCHARRER, being duly sworn, testified as follows:

Direct Examination, by Mr. Richter.

Q. Mr. Scharrer, will you state your full name, please?

A. Edward C. Scharrer.

Q. How do you spell that?

A. S-c-h-a-r-r-e-r (spells).

Q. Where do you live, Mr. Scharrer?

A. 31 West Springhill avenue, Dayton 9.

Q. Ohio?

A. Ohio.

Q. What is your occupation?

A. I am a shorthand reporter, free lance.

Q. What training have you had as a shorthand reporter?

A. I was official shorthand reporter of the Common Pleas Court for 25 years, in this county.

Q. Did you take stenographic notes of the proceedings before the Federal Grand Jury, at Dayton, Ohio, on February 25, 1952, at which the defendant Robert G. Hollifield testified?

A. Yes, sir.

Q. Will you read from your notes—

Mr. Kelley: I always felt it customary before a witness would read from such a thing it would be offered in evidence so the parties might make their proper objections.

The Court: Do you have your shorthand notes?

The Witness: Yes.

The Court: Let them be marked Government's Exhibit 39 for identification.

Thereupon said shorthand notes were marked for identification as Plaintiff's Exhibit No. 39.

Mr. Kelley: May I ask one or two questions on the voir dire?

The Court: Yes, sir.

By Mr. Kelley:

Q. Mr. Scharrer, do these shorthand notes comprise a shorthand transcription of everything said by Mr. Hollifield during any and every appearance before this Grand Jury?

A. Yes, they do.

Q. Did you transcribe all of the proceedings before this Grand Jury during this session here in February?

A. Yes, sir, all of them.

The Court: By transcript—

The Witness: In shorthand.

The Court: I think you better have that understood. He means did you take it down stenographically?

Mr. Kelley: I should correct it.

Q. Did you make shorthand notes of everything said during all sessions of the Grand Jury that sat in February?

A. I don't know about that. The reporter of this court was ill several days and I took her place and one day of that time was spent in the Grand Jury where these notes were taken.

Q. Of your knowledge, you can't state that Mr. Hollifield did not testify before the Grand Jury on some other day, is that right?

A. No, I wouldn't know that.

Q. Do these notes comprise testimony of Mr. Hollifield of any one day?

A. Yes, they do.

Q. Have you made a transcription from your shorthand notes of this testimony?

A. Yes, sir.

Q. Where is that?

A. It is in the possession of the government attorneys, as far as I know.

Mr. Kelley: If your Honor please, since this has been offered, we would like the customary opportunity to examine it and in order to do so we should have the transcript. I can't read shorthand. I ask the government to produce it.

The Court: I have no objection. I can't read it either. We will have the transcript of the stenographic notes marked as Government's Exhibit No. 40 for identification. One is the stenographic notes and the other is the transcript in the form that we can all read, I guess.

Mr. Richter: If the Court please, we do not propose to introduce the typewritten transcript.

The Court: I understand. You don't have to. I am only having it marked for identification at this time.

Mr. Richter: All right.

Thereupon said transcript was marked for identification as Plaintiff's Exhibit No. 40.

Q. I show you what has been marked for identification Government's Exhibit 40, will you examine it and state whether or not that fully, completely and accurately reproduces what you have taken in shorthand, appearing in Plaintiff's Exhibit 39 for identification?

A. Yes, it does.

Q. Have you examined it in full to be sure of that?

A. No, but I recognize it from the appearance of it.

Q. You know its contents. I observe that certain portions of that have been underlined in red pencil. Did you do that?

A. No, I didn't.

Q. Do you know who did?

A. I saw one of the attorneys for the government do some of that underlining, but probably not all.

Mr. Kelley: May we ask for a moment or two to examine this, please?

The Court: Certainly.

Mr. Kelley: May we retain this while the witness is testifying?

Mr. Richter: Sure.

Mr. Kelley: As to this, the defendants interpose the same objection that was made and argued on Friday, that it is inadmissible.

The Court: All right. Read it real loud, Mr. Scharrer, please.

The Witness: I was wondering if I should wait for a question.

Mr. Richter: All right. I will give him the question.

The Court: Go ahead.

By Mr. Richter.

Q. Will you read the parts of that confession or statement before the Grand Jury which the District Attorney has indicated you should read?

A. Yes, sir. (Reads)

"Robert G. Hollifield, being first duly sworn, testified before the Grand Jury as follows:

By Mr. O'Donnell:

"Q. State your full name, please.

"A. Robert George Hollifield, Senior.

"Q. Now, what is your age, Mr. Hollifield?

"A. Thirty-seven.

"Q. And how long have you been employed out at Wright Field?

"A. Nine years and ten months.

"Q. And in what capacity did you first start to work out at Wright Field?

"A. I was an engineering draftsman.

"Q. Are you married?

"A. Yes, sir.

"Q. You have children?

"A. Yes, sir; two.

"Q. And what are their ages?

"A. I have a daughter 13, a son 5.

"Q. Now, in recent years, say since the Korean affair started, in what capacities did you work out at Wright Field?

"A. I was an aircraft equippage designer.

"Q. Now, did you in your work at Wright Field have occasion to become acquainted with a man by the name of William J. Opper?

"A. Yes, sir, I did.

"Q. When did you first become acquainted with Mr. Opper?

"A. To the best of my memory it was about November of 1950.

"Q. At the time you became acquainted with Mr. Opper did you know that you—had you worked where it was bringing you in contact with any business at Wright Field in which Mr. Opper was interested?

"A. Yes.

"Q. Briefly and generally state what was the nature of the work or contracts or materials in which you had anything to do with, in which Mr. Opper was interested.

"A. Well, I developed and standardized a couple of different types of survival kits which contained various items of personal apparel for use by aircraft members in the event of bailing out of aircraft to sustain themselves in regions where they might not be—have access to warmth and food and so on and so forth, where they must survive on the equipment they have on their body.

"Q. In other words, it was part of your duty to pass on the equipment that went into these survival kits?

"A. Well, I wrote the specifications, yes, sir.

"Q. And what material was Mr. Opper furnishing that went into those kits?

"A. Goggles.

"Q. Goggles only, as far as you know?

"A. As far as I know.

"Q. Now, he was not what you call a prime contractor, was he?

"A. Not to my knowledge. He was a sub-contractor.

"Q. And who, if you know, had the prime contracts for these survival kits?

"A. Well, there were various contractors that had contracts for these kits: Cappel-MacDonald in Dayton, and Bellknap-Thompson in Chicago had that item.

"Q. Was there a concern by the name of Buchsbaum in it?

"A. S. Buchsbaum & Company; they are in Chicago.

"Q. Now, is this understanding right that I have: a situation that while a man in Opper's field, his field of

supply, was not—could not have prime contracts with the government for these survival kits, you could pass on his material which he had to furnish and okay that to the prime contractor?

"A. That is correct.

"Q. In other words, let us suppose the John Jones Company had the prime contracts. It was up to Wright Field that would okay the Opper goggles to the John Jones Company to go in their kits?

"A. That is right.

"Q. Now, had you been passing on the goggles furnished by Opper's company before you ever saw him in person, do you know?

"A. I don't understand that, Mr. O'Donnell.

"Q. What was the name of Opper's company?

"A. I don't really know what the name of the company was, or whether there was a company, Mr. O'Donnell.

"Q. Now, did you know that this man Opper was furnishing goggles before you ever met Mr. Opper?

"A. No. The first time I met Mr. Opper was at Wright Field and I didn't know that he was furnishing any company with goggles. I don't believe that—he couldn't have furnished any prime contractor with goggles without an okay.

"Q. All right, that is what I am leading up to, that he first talked to you about goggles before you knew he was furnishing goggles, was in a position to furnish goggles?

"A. Yes, sir.

"Q. All right. Now, from that, when was it you first met him?

"A. Oh, to the best of my memory, I think it was about November, 1950.

"Q. Briefly, what was the conversation that you had with him?

"A. Well, he came in my office and told me at that time that he had war surplus goggles which were in accordance with the present specification except—and I never actually knew—I don't actually know whether this ever did

exist, or does exist,—which would be in accordance with the specification, other than with the exception it was new matter, all brand new material instead of war surplus matter. And I don't remember that he brought this up to me at the first time, but at a later time he did. The specification for the goggles calls for two types of goggles. There is Type 1 and Type 2. If I remember correctly, one is for an extreme cold weather lens, that consists of a laminated lens; and the other one is a one-piece glass lens; and the difference in them being the extreme cold temperature requirement of the laminated lens or the Type 1, if I am correct, and the fact that the Type 2 didn't have, or the single piece glass lens did not have an extreme cold temperature requirement.

"Q. See if you can go on without my interrupting you?

"A. Well, as I said, the first time I met Mr. Opper, why I found that that is what he was interested in selling to the government. Later on I found out, through conversation with him and contractors, that he was interested in selling those goggles to the prime survival kit contractors providing they were considered satisfactory by me. And I don't know whether it was the second or third time that I met him. That is when he made a proposition to me whereby if these goggles that he had to sell were satisfactory, that he could make it interesting to me.

"Q. Well now, is it a fact that the specifications called for new goggles?

"A. Not the specifications, no, sir, Mr. O'Donnell.

"Q. Well, there is a question whether or not—I have read in the report,—whether these goggles that went into these kits should have new goggles or if surplus property goggles could be used. Does that enter into the matter in any way?

"A. Inasfar as the kit specifications are concerned, to my knowledge it does. Now, from the contract standpoint I don't know whether that is true or not. That is why I said, Mr. O'Donnell, that I wasn't—I had heard one time that all of this equipment was to be new; but I don't

really know that. I don't really know that. I don't know whether it was ever in the contracts or not because I never read a contract.

"Q. All the specifications said was the goggle, is that true?

"A. Yes, sir; the specification listed the goggle.

"Q. Well, up to this point, up to the point where a proposition, as you call it, was made to you by Mr. Opper, what goggles had you okayed?

"A. Well, there were never any new goggles made by anyone, to my knowledge; there were never any other goggles that went into those kits.

"Q. Well, all right. Now, the goggles concerning which Mr. Opper made a proposition to you—let's speak of them, that is what I have in mind—how did they differ in any respect from the goggles that you had been okaying?

"A. To my knowledge—Now, I hadn't okayed any goggles before that, so I can't exactly answer your question, because prior to the time you are talking about, to the best of my memory I hadn't okayed any goggles. But I can give you an instance where sometime before this the government, instead of—the air force, instead of buying survival kits, assembled survival kits of their own. And they did this in an air force depot and the same goggles were shipped in from other depots and assembled in these survival kits with these other items and used. To the best of my knowledge, the goggles that Opper had to sell and the goggles that the government had previously furnished were no different.

"Q. All right. Now let's just come down to the point. You said a proposal was made to you by him that he would do something for you if you arranged it so his goggles could be used?

"A. That is right.

"Q. Is that correct?

"A. That is right.

"Q. What was the proposition? Give us as near as you can his words to you.

"A. Well, as well as I can remember, his proposition was that I would—I was to receive $1750, providing these goggles were satisfactory for use in these kits.

"Q. Where was that conversation had?

"A. At Wright Field.

"Q. When; about when?

"A. Well, about December or January, 1951; about January, 1951.

"Q. January, 1951. At that time, up until that time, had you okayed or passed any of his goggles?

"A. No, sir.

"Q. How soon after that conversation did you pass on or okay any of his goggles?

"A. I just don't remember how soon afterwards.

"Q. Well, can you give us any idea?

"A. Well, no. I don't remember, Mr. O'Donnell. There was a time that elapsed from the first time that he made this proposal to me and when I okayed the goggles, because he called me two or three times from Chicago and pressured me about when was I going to do it and when was I going to do it; and I told him I would have to run some tests on these goggles before I thought that they were acceptable.

"Q. Now, it seems to me that the figure $1750 was a rather odd figure. Do you know how that was arrived at?

"A. Well, I believe he arrived at it from a figure of—I don't know exactly how he arrived at it. I didn't dicker with him for more or less, and how he arrived at that figure, I don't know. But I remember one time that he said that he had it figured out that it was to be seven cents a goggle. Is that what you mean, Mr. O'Donnell?

"Q. You do remember that, that he at one time sort of calculated on the 1750 amounting to seven cents a goggle?

"A. Yes.

"Q. Well now, did you ever receive any money from him?

"A. Yes, sir.

"Q. Where and when?

"A. Well, I received money from him two or three different times in Dayton, Ohio, and once—

"Q. Well now, let's take it one at a time. All right. What was the first amount of money you ever received?

"A. Fifty dollars.

"Q. Where?

"A. In my automobile, on the way to Dayton from Wright Field.

"Q. When was this, in the morning or noontime, or when?

"A. Well, it was in the middle part of the day. I think it was—

"Q. Where did you meet him that day?

"A. Well, he came out to the Field.

"Q. And you got in your automobile to go some place with him?

"A. I was taking him to the train.

"Q. That is what I wanted to get at. State the conversation that was had between you and him when the fifty dollars was paid to you.

"A. Well, the proposition had already been made at that time but no money had been paid to me and, bluntly speaking, I told him that I could use some money.

"Q. Can you give us the date of the fifty-dollar transaction?

"A. It was early in February or March, I believe, of last year.

"Q. Nineteen fifty-one?

"A. Yes, sir.

"Q. Had you at that time approved his goggle?

"A. I don't remember, Mr. O'Donnell.

"Q. You were taking him to his train when it was mentioned about by you that you could use some money?

"A. That is right.

"Q. And just tell us what happened. Did you take the money out of his billfold or what?

"A. Well, he gave me fifty dollars and made some remark that he didn't have much more money with him or

that he was going on to Indianapolis, I think, and that is all he could give me then.

"Q. Did you express any disappointment that the sum wasn't larger?

"A. I don't believe that I did then, no, sir.

"Q. When was the next time you accepted any money from him?

"A. Well, I don't remember whether it was the next time or not but I got some money from him in Chicago.

"Q. Well, didn't you receive some money other than the fifty dollars in Dayton before you —

"A. Yes; about the second of August I received a couple of hundred dollars from him.

"Q. Was that before or after you went to Chicago?

"A. I think that was after I went to Chicago. That definitely was after I went to Chicago.

"Q. Well now, we have the fifty-dollar transaction. Now my question is, do you remember of receiving from him any other money before you went to Chicago?

"A. Yes. You are trying to get this in sequence?

"Q. Yes.

"A. Yes. I remember I received a couple of hundred dollars from him after that.

"Q. You say a couple hundred. Exactly two hundred dollars?

"A. To the best of my memory, yes, sir.

"Q. Can you fix the date for that?

"A. Well, I believe it was around the first of April.

"Q. And where was that that you accepted the money?

"A. I don't remember.

"Q. Do you remember what brought it about; did you broach the subject to him?

"A. I don't remember, Mr. O'Donnell, that time.

"Q. And you don't remember where you were when he gave you the two hundred?

"A. No, sir, I don't remember.

"Q. Do you recall of one time making the statement to the F. B. I. agents that you were taking him to lunch

on the occasion when this two hundred dollars was—either he was taking you or you were taking him to lunch?

"A. Well, no, I don't recall it, Mr. O'Donnell, but no doubt it is right. I don't remember now.

"Q. Do you think it was about April 1st?

"A. Yes; it wasn't too long after the first time he gave me the fifty dollars.

"Q. Well, when was it that you made your trip to Chicago?

"A. I think that was in May.

"Q. Well now, assuming that this date is correct, or approximately correct, did you receive any more money from him here in Dayton?

"A. Yes, sir, I did.

"Q. Before you took the trip to Chicago?

"A. I don't believe I did before I made the trip to Chicago.

"Q. And do you think it was around the first of May that you went to Chicago?

"A. Yes.

"Q. How long were you gone? Did you take time off from the Field?

"A. No, sir.

"Q. How did you go; over the week-end?

"A. Went up on Saturday morning and came back Saturday evening.

"Q. Did you have an appointment with him, was he expecting you in Chicago?

"A. Yes, sir.

"Q. And how did you make that appointment, by telephone or by letter?

"A. I believe it was by telephone.

"Q. And what did you say to him about your going to Chicago?

"A. Well, I told him I was coming to Chicago and that I wanted to see him. I don't know as I told him—I don't believe that I told him I was coming for an additional payment or money or—probably just an understanding.

"Q. You did go to Chicago?

"A. Yes, sir, I did.

"Q. Did you drive?

"A. No, sir.

"Q. Did you go on a day train or night?

"A. No, sir; I flew.

"Q. Oh, you flew?

"A. Yes, sir.

"Q. And what time did you get to Chicago, approximately?

"A. Well, to the best of my memory it would be about nine-thirty, ten o'clock in the morning.

"Q. And where did you go after you got off the—when you got into the city?

"A. I went down in the loop.

"Q. To his office?

"A. To his office, yes, sir.

"Q. And was he there when you got there?

"A. No, sir. May I smoke?

"Mr. Aug: Yes.

"(Witness lit a cigarette.)

By Mr. O'Donnell:

"Q. Well, April 1st was a Sunday. Is that any help in fixing what the date might have been when you went out there?

"A. No, sir, it does not. But I went up there on a Saturday.

"Q. Well, the first Saturday in May was May 5th. Would that help you in fixing the date?

"A. No, it wouldn't help me in fixing the exact date, but I believe it was right close to that time.

"Q. Well, you got to his office and he wasn't there and I assume you waited until he came?

"A. Yes, sir.

"Q. And when he came did you go into his office?

"A. Yes, sir, I did.

"Q. And what conversation did you have?

"A. Well, we talked about various things; talked about his other special equipment, his line, and generalities, and about this proposition.

"Q. And then what was said, if anything, about money?

"A. Well, I don't recall exactly what was said about money but he gave me a thousand dollars at that time.

"Q. In cash?

"A. Yes, sir.

"Q. Well then, wasn't there some conversation preceding his giving you the money?

"A. Well, no doubt there was but I don't specifically recall what we talked about concerning money.

"Q. What did you go to Chicago for?

"A. To get the money.

"Q. How much money were you expecting to get?

"A. Well, I didn't really know.

"Q. What had you done for him up to this point for which you could expect any money?

"A. Well, for what I stated here before. Now, he came in through a prime contractor with these goggles and they in turn asked if these goggles were satisfactory for use in these survival kits. I felt that they were satisfactory and I feel so—

"Q. Let me ask you this: was there anything wrong with these goggles, in your opinion?

"A. No, sir.

"Q. Would you have okayed his goggles if he hadn't offered to pay you some money?

"A. I believe I would.

"Q. Did the offer by him to you of money influence your decision?

"A. Yes, it influenced my decision. I would like—if you don't mind, I would like to say something, Mr. O'Donnell.

"Q. Say anything that you care to, but I would like you to say everything you can because you know all about this and I know very little.

"A. I admit that the proposition, or the money that

he gave me, did influence my decision, but I would like it to go on record that in my opinion the goggles at that time were satisfactory and I feel so now. I honestly believe in my own mind that irrespective of that I would have considered them, irrespective of the offer. The reason I say that is because I have considered many items as to whether they are satisfactory for use as components of survival kits.

"Q. Well, let's for the sake of argument, now, assume that you had his goggles before you for your okay and you had John Jones' goggles before you for okay; you were of the opinion that Opper's goggles were satisfactory and the government was getting a better deal in the Jones' glasses—I mean in the Opper goggles, than he was in the Jones; but let's assume that Jones had come along and says, 'I'll give you five thousand dollars if you will okay my goggles.' Do you think the five thousand dollars would have influenced you to okay the inferior goggles?

"A. Well, in the first place the goggles—in my mind the goggles are not inferior—they were not inferior.

"Q. Well, I know, but I am trying to find out what influenced you. Would you for any amount have okayed his goggles that you didn't think were fit for these kits?

"A. No. I would like to state that—

"Q. Well now, all right; I am trying to visualize in my own mind what might have happened up there in that office in Chicago. You went there to get paid off for something that you had done for him.

"A. Yes, sir.

"Q. And he knew that you were there—coming there to get paid off, didn't he?

"A. Yes, sir.

"Q. Well now, I think this jury would like to know—have you give them a little picture of what went on there between you.

"A. When I was in his office?

"Q. Yes.

"A. Well, I was there about an hour and we talked

about these goggles and about the different types that he had, and he gave me the money and he talked to me about this other instrument that he was selling and generalities.

"Q. Well, he had promised you $1750.00?

"A. Yes, sir.

"Q. And you had done for him all that you expected to do for him, had you?

"A. Yes, sir.

"Q. And up to this point he had only paid you $250, is that right?

"A. As well as I can recall.

"Q. And then you know, according to this agreement, the proposition you had with him, you had $1500 coming?

"A. That I had $1500 coming?

"Q. Yes, coming. If he promised to give you $1750 and he had only paid you 250, you still had 1700 coming —I mean, 1500 coming?

"A. That is right.

"Q. Well, was anything said between you—did you say, 'I am up here to get my 1500 bucks'?

"A. No, I never said I was up there to get my $1500. No, I never said that. I said I was there to get some money but I didn't say $1500.

"Q. Well, did you say to him, 'I made this trip up here, now I would like a little money'?

"A. Yes, I did say that.

"Q. And what did he say?

"A. Well, he said, 'I went to the bank this morning and that is the reason that I am late and I have got a thousand dollars'.

"Q. Where did he have the thousand dollars?

"A. Well, he had it on his person; I don't know whether it was a pocket secretary or bill fold, but he had it on his person.

"Q. Now, I don't mean to contradict you at all, but my recollection is that the other day in the office you said that he opened a drawer of his desk and pulled out a thousand dollars.

"A. Mr. O'Donnell, I don't believe I said that.

"Q. Well, all right; I am not saying you did. Well, did he have it in a billfold?

"A. Well, I just don't remember that.

"Q. Well, it would seem somewhat to me, Mr. Hollifield, that if some man gave me a thousand dollars in cash last May, within the last year, I would have some recollection of the mechanics of how he did it.

"A. Well, Mr. O'Donnell, I have been questioned by FBI agents quite closely on that and that was five months ago and I don't remember that I was able to tell them any closer at that time, and it should have been fresher in my memory than now, and I don't remember that I was able to tell them any closer than now.

"Q. Did he count off a thousand dollars; did he hand you a pan of money?

"A. I think he handed me the money.

"Q. Did you count it there?

"A. Yes, sir.

"Q. And have you any recollection at all about the denominations?

"A. Well, they weren't real small bills; as well as I remember, ones and fives; because I think that would be quite a thickness of money and I know that I put it in my billfold.

"Q. Well, what he said to you about having been to the bank and that he had a thousand dollars, did you infer from that that he had gone to the bank to get a thousand dollars to give to you?

"A. Yes, sir.

"Q. Well, did you remain with him any length of time after you got the thousand dollars? Did you go to lunch or anything like that?

"A. No, sir; I wasn't with him more than an hour all the time.

"Q. Up to this point had you done for him all that you had expected to do for him?

"A. Yes, sir.

"Q. There were no other contracts in the offing, were there?

"A. Not that I remember.

"Q. Well, now, that is $1250. Did you receive any more money from him?

"A. Yes, sir, I did.

"Q. When?

"A. Well, I received a couple hundred dollars from him about the second of August last year.

"Q. How do you fix that date?

"A. Well, because he gave it to me just prior to when I had a two weeks' vacation and I left on the fifth of August.

"Q. Was that here in Dayton?

"A. Yes, sir, it was.

"Q. Out at the Field?

"A. As well as I can remember—I don't remember where it was but it wasn't at the Field, because he never gave me any money at the Field that I remember of.

"Q. Can you tell the jury any of the circumstances surrounding giving you that two hundred?

"A. Well, I remember that I got in touch with him and I told him that I wanted—

"Q. How did you get in touch with him?

"A. I called him by telephone.

"Q. Put in a call to Chicago?

"A. Yes.

"Q. And you think he came to Dayton purposely to give you the $200?

"A. Well, he said he did.

"Q. Where did you meet him?

"A. Well, he came out to the Field that day.

"Q. When you called him did you say anything about you are going on your vacation and you needed money?

"A. Yes, sir, I did.

"Q. Or anything like that. Was it at the Field he gave you the money?

"A. Sir?

"Q. Was it out at the Field that he gave you the money?

"A. I don't recall that he gave it to me out at the Field, no.

"Q. Do you remember where you were when he gave you the money?

"A. I don't remember that time, Mr. O'Donnell.

"Q. How long were you with him on this occasion on August 2nd?

"A. Well, not more than a few minutes. We had no business to talk about or anything at the Field when he came out.

"Q. That money, I assume, was in cash?

"A. Yes, sir.

"Q. Now, did you ever receive any more money?

"A. Yes, sir.

"Q. When and where?

"A. One other time; in Chicago.

"Q. How much was that?

"A. One hundred dollars.

"Q. When?

"A. Well, that was—as well as I can remember, that was prior to May when I went up there in May; I don't recall exactly when it was.

"Q. I was trying to get these payments in point of time. And you say this hundred dollars was given to you in Chicago?

"A. Yes, sir.

"Q. Prior to the time that the thousand dollars was given to you?

"A. Yes, sir.

"Q. Are you sure about that?

"A. Well, as well as I can recall.

"Q. Well, can you fix any date at all that the hundred dollars was given to you in Chicago?

"A. Well, no, I can't fix a date. I can tell you where.

"Q. Where?

"A. In the Wrigley building restaurant.

"Q. Well now, can you remember, Mr. Hollifield, whether that was before or after you had received the thousand dollars?

"A. I believe that it was after I received the thousand dollars, because at that time my family and myself were spending a week end with my in-laws in Chicago and I went down and had dinner with him, and that was—I believe that was after I got the thousand dollars.

"Q. Would you say it was after the time that you got the two hundred in August?

"A. Oh, no, it was before that time, because that is the last money that I got from him, was in August.

"Q. That is the last money that you got from him?

"A. Yes, sir.

"Q. Making a total of $1550, is that right?

"A. Yes, sir.

"Q. Did you ever ask him for the balance that was due you, the $200?

"A. No, sir.

"Q. How old a man is Opper?

"A. Well, I don't know his age, but—

"Q. Well, just guess at it.

"A. I would say he was about between 45 and 50 years old.

"Q. Did you know any other persons connected with the firm?

"A. No, sir, I never met anyone else.

"Q. Did you ever see his plant or storeroom—

"A. No, sir.

"Q. —whatever he had? Was his plant or storeroom and other facilities that he had ever inspected by the government inspector, that you know of?

"A. I don't know anything about that.

"Q. Is there anything else that you think that would be of enlightenment to the grand jury in connection with your dealings with Mr. Opper?

"A. I don't believe so. That is what I did and that is the money I got.

"Q. Where is Mr. Opper's office?

"A. I don't remember the street.

"Q. You know the building?

"A. No, sir, I don't.

"Mr. O'Donnell: Well, you may leave the witness stand but please don't leave the building, just wait outside."

By Mr. Richter:

Q. Mr. Scharrer, do your notes indicate whether or not the witness was sworn?

A. I have the word "sworn" after his name.

Q. Is there anything else at the beginning of your notes that indicates whether or not he was sworn?

A. No, just that word sworn after his name. That is all I have.

Q. After his name?

A. Yes, sir.

Q. Do your notes show whether or not the witness waived immunity before he gave his testimony?

Mr. Kelley: I object to the question.

The Court: Well, do you know? You may answer the question. Just answer yes or no.

Q. Do you know?

A. Yes.

Q. What do your notes indicate in that connection? Will you read it please?

A. At the very beginning Mr. O'Donnell said: "There will appear to you as a witness, Members of the Grand Jury, a man by the name of Hollifield, and it has been alleged and there has been some statements made by Hollifield to the effect that he has accepted moneys from a man by the name of Opper."

Q. Mr. Scharrer, what we are interested in—

Mr. Kelley: Just a moment.

Mr. Richter: For the purpose of saving time, I wanted to direct his attention to the specific—

The Witness: I found that place now.

Q. All right. You may proceed.

A. This is also by Mr. O'Donnell: "Mr. Hollifield, the grand jury is about to hear evidence investigating a case involving William J. Opper and yourself. Now I advise you that under the Constitution you have a right, if you care to exercise that right, of refusing to testify if in your opinion your testimony might tend to incriminate you. Now, at the instant time we are referring to your connections with a man by the name of Opper only. Are you willing to testify concerning your relations with Mr. Opper?

"A. Yes, sir.

"Q. (Handing paper to the witness) Read that please.

"A. I hereby waive all rights of immunity and consent to testify in the matter being investigated by this body and hereby request said grand jury to hear me in the interest of truth."

"Q. Are you willing to sign that?

"A. Yes, sir.

"Mr. Aug: The matter is designated 'In re: William J. Opper'."

Mr. Richter: That is all. You may have the witness.

Mr. Kelley: No cross-examination.

Mr. Richter: That is all, Mr. Scharrer. We have another witness if the Court desires to proceed at this time.

The Court: Yes.

Mr. Richter: All right. Mr. Regan.

And thereupon

MR. FRANCIS A. REGAN, being duly sworn, testified as follows:

Direct Examination, by Mr. Richter.

Q. Will you state your full name?

A. Francis A. Regan.

Q. What is your address, Mr. Regan?

A. Chicago, Illinois.

Q. What is your occupation?

A. I am a public accountant.

Q. What were you prior to becoming a public accountant?

A. Special agent of the F. B. I.

Q. When did you terminate your employment by the F. B. I.?

A. October 27, 1951.

Q. How long prior to that time had you been an F. B. I. agent?

A. Since May 27, 1940.

Q. Have you ever met the defendant Robert G. Hollifield in this case?

A. No.

Q. You say you have never met him?

A. I have not.

Q. Beg your pardon. William J. Opper?

A. I have.

Q. Can you point him out in this court room by stepping down and placing your hand on his shoulder?

A. (Witness leaves the witness stand and puts his hand on defendant William J. Opper's shoulder.)

Q. All right.

A. (Witness resumes the witness stand.)

Q. Have you ever had any conversations with the defendant William J. Opper?

A. Yes.

Q. When?

A. On three occasions: October 10th, 12th and 16th, 1951.

Q. Starting with the first conversation, where was that?

A. In the office of the F. B. I., at Chicago, Illinois.

Q. Who was present at the time besides Mr. Opper?

A. Besides Mr. Opper, there was an agent John Donaldson, assigned to the Chicago office, and myself.

Q. Will you relate to the Court and Jury the preliminary

discussions that you had with Mr. Opper on that occasion, October 10th?

A. When Mr. Opper first appeared in the Chicago office, I identified myself and Mr. Donaldson, as agents of the F. B. I. I told him that we were interested in discussing with him any transactions that he may have had with a Robert Hollifield. I told him that anything he would tell us would be voluntary on his part; that he was not compelled in any way to tell us anything; that the details of the transactions that were involved we were not acquainted with, and that it was possible that in describing these transactions that he could involve himself in something and that he should be aware of that.

Q. What did he say, if anything, at that time?

A. He said that he understood that he was there on a voluntary basis and that what he told us would be voluntary on his part.

Q. What time of day was this, on October 10th?

A. On October 10th that would be in the morning.

Q. Do you remember about what time of the morning?

A. Not exactly, no, sir.

Q. Roughly?

A. Approximately 10 o'clock.

Q. Now will you relate to the Court and the Jury the substance of the conversation that you then had with the defendant William J. Opper?

The Court: Just a minute. Now, Members of the Jury, anything Mr. Regan may testify to, if such there be,—of course, I don't know what he is going to testify to any more than you do. However, if in his testimony there are any statements made by Mr. Opper concerning Mr. Hollifield then I say to you now, as strongly as I did before, that you are not to consider those statements as against the defendant Hollifield. You may consider them in your consideration of the case, in arriving at your final conclusion as to the defendant Opper himself. Anything that he may have said about himself in connection with these matters, if he did say anything, that, of course, you

should take into consideration giving it such weight as you deem it properly deserves, but as against the other defendant Mr. Hollifield, you must not give it any consideration as against Hollifield. In other words, they each occupy exactly the same position. Whatever they state about themselves, that you have the right to consider, if you so see fit to do, when you come to consider the case. But what either one may have said about the other, that you cannot consider as testimony against the other. Do I make myself clear?

Let me ask this question. I always want to do this first and it always slips my mind. Mr. Hollifield was not present. Was Mr. Hollifield present at any of these conversations?

The Witness: No, your Honor.

The Court: I understand your testimony, so far as you, yourself, are concerned, you don't know Mr. Hollifield?

The Witness: That is right.

The Court: All right. Now you may proceed.

A. I started off the interview by asking Mr. Opper to generally explain his business in Chicago. Mr. Opper told me that up to approximately four years prior to the time of this interview he had been located in Indianapolis, about four years before he had come to Chicago, and during that period of time had engaged in business in Chicago in his own name, William J. Opper, or The William J. Opper Company, and at times as The Chicago Compass Company.

He stated that about two years prior to the time he was interviewed he had gone to Wright Field, at Dayton, Ohio, and left his name at the Field as a possible source of compasses. He said that sometime thereafter he received a number of inquiries from various companies, including Cappel-MacDonald and S. Buchsbaum, of Chicago, relative to these compasses and in substance these

companies requested him to furnish details concerning his product.

He stated that he furnished this information to the companies and on one occasion, while visiting Buchsbaum, in Chicago, Buchsbaum had advised him that included among the items that Buchsbaum was hoping to furnish to the government were some goggles and asked Opper if he could locate some of these goggles.

Opper told me that thereafter he went out and succeeded in locating a supply of these goggles and left a sample at Buchsbaum and Cappel-MacDonald. He stated at first there was some question about the specification on these goggles and he said that to the best of his recollection the question concerned the color of the elastic on these goggles.

Mr. Opper said that the question of the specifications was handled by Buchsbaum and Cappel-MacDonald, not by himself, and that eventually he received orders from these companies for these goggles.

He stated that on one occasion he visited the offices or premises of Cappel-MacDonald and there met a Robert Hollifield. I asked Mr. Opper if Mr. Hollifield had ever solicited or asked for funds, money of any kind. Mr. Opper said, "That is a difficult question to answer. Is there any difference between giving money and loaning money?" I then asked Mr. Opper if he had given money to Robert Hollifield for any purposes whatsoever. Mr. Opper then said that he wished to consult an attorney before discussing the subject any further. With that the interview on October 10, 1951 terminated.

Q. Mr. Regan, did Mr. Opper give the date on which he met Hollifield at the Cappel-MacDonald office in Dayton?

A. He didn't give that date on October 10th.

Q. All right. Well, then when did you see him next?

A. I next saw Mr. Opper on October 12, 1951.

Q. Where?

A. At the offices of the F. B. I., in Chicago.

Mr. Kelley: Excuse me. I don't know if I heard that correctly. Could the last three or four questions and answers be read?

Mr. Richter: All right.

(Thereupon the last three Q's and A's were read by the reporter.)

Q. Who was present on that occasion?
A. On that occasion, Mr. Opper—

The Court: That is October 12th, you mean?

Mr. Richter: October 12th, yes, sir.

A. (Continued) on that occasion, Mr. Opper, John Donaldson and myself were present.
Q. Will you state the preliminary discussions that occurred on that occasion?
A. I told Mr. Opper then, in substance, that we were ready to continue the interview that terminated on the previous occasion.
Q. Will you then relate the substance of the conversation that took place between you on October 12th?

Mr. Kelley: For the record may we state the objection made last Friday and argument last Friday,—same objection.

The Court: Very well. All right. Same ruling, of course, motion to strike and all. Those same rulings to right through. Very well. Go ahead.

A. Mr. Opper, in substance, reviewed identically what he had told us on the previous day. He then said that when he met—that he met Mr. Hollifield at the premises of Cappel-MacDonald for the first time and thereafter had met Mr. Hollifield on approximately fifteen occasions, at Wright Field, at Dayton, Ohio, and at Chicago, Illinois. Mr. Opper said that he first saw Hollifield in Chicago, Illinois, at Buchsbaum's, at which time, to his knowl-

edge, Mr. Hollifield had visited Buchsbaum in connection with expediting some purchases being made by Wright Field. Mr. Opper said that on that day, in the evening, that they, he and his wife went out socially with Mr. and Mrs. Hollifield.

He said that on the next occasion that he met Mr. Hollifield in Chicago was at the offices of his company on East Ohio street. He said that Mr. Hollifield called at his offices alone and on that occasion told him "Bill, I am in some trouble, financial trouble. I need some money. I am about to lose my home. Can you help me out?" Opper said that he told Hollifield he thought he could and asked him how much money he needed. Mr. Opper said Hollifield told him he needed $1200. Opper said that he and Hollifield parted and that he, Opper, went to his residence and there obtained the sum of $1000 in currency. He then went to the restaurant in the Wrigley Building, in Chicago, met his wife there, and later met Mr. Hollifield and Hollifield's daughter. They then had lunch and Opper stated that during the course of the lunch he and Hollifield left the table and went into the wash room, at the restaurant, and in the wash room gave Hollifield an envelope containing $1000 in currency. In substance, I asked Mr. Opper the purpose of this transaction and he stated that it was a loan made upon the request of Mr. Hollifield. I then asked him, being a business man, if that was a businesslike way of handling a loan. Mr. Hollifield, or Mr. Opper, in effect, or in substance stated that he saw nothing wrong with the manner in which the transaction was handled. I asked him if he had ever seen Mr. Hollifield's home. He said that he had not. I asked him if he, of his own knowledge, knew that Hollifield had a home. He said that of his own knowledge he did not know that Hollifield had a home. I asked him if he obtained any security of any kind for this loan. He said he had not. I asked him if he had a receipt or any record to evidence this loan. He said that he had not. I asked him what the ar-

rangement was concerning interest and repayment. Mr. Opper said there was no agreement as to interest, that the loan did not call for any interest and that it was understood that Mr. Hollifield could have up to about two years to repay the loan. I asked him if Mr. Hollifield had ever made any payments on this loan. He said that Mr. Hollifield had not. I asked him if he had ever asked for the repayment of the loan. He said on one occasion he had and that Hollifield said: "I will try to get around to paying it."

Mr. Opper said that approximately two weeks after this meeting with Mr. Hollifield in Chicago, he met Hollifield next in Dayton, Ohio, at which time he was located at the VanCleve Hotel, and shortly before noon he called Mr. Hollifield at Wright Field and, subsequently, Hollifield appeared in the parking lot across the street from the VanCleve Hotel in a car. Opper said that he then rode out to Wright Field with Hollifield, and that either while in the parking lot or during the course of the trip to Wright Field he handed $200 to Hollifield, removing the money from his wallet and handing it to Hollifield.

Mr. Opper stated that this represented the balance of the $1200 originally or previously requested by Mr. Hollifield.

I asked Mr. Opper if there were any records, receipts or anything to evidence this transaction and he stated that there was not. I then asked Mr. Opper if this information that he had given to us could be reduced to writing. Mr. Opper stated that he would prefer to consult what records he might have and to further think about these transactions, in order that he could be more specific as to dates. He stated that he would then call up to the Chicago office of the F. B. I. and furnish the written statement.

That is about the substance of our conversation on October 12th.

Q. Mr. Regan, did Mr. Opper place or fix a date at which he made this $1000 payment, during the course of his statement to you?

A. During the course of our discussions on October 12th, he did not.

Q. Had he done so at the previous meeting?

A. No, sir.

Q. All right. When did you see Mr. Opper again?

A. October 16, 1951.

Q. Who called for the appointment at that time, on October 16th?

A. It is my recollection the day before Mr. Opper called me on the 'phone and stated he would be in the following day.

Q. Now that meeting occurred again at the office of the F. B. I. in Chicago; is that right?

A. That is right.

Q. Who was present?

A. On that occasion Mr. Opper and agent Thomas Wilkes and myself were present.

Q. Nobody else?

A. That is all.

Q. Will you state what, if any, preliminary discussion took place on that occasion?

A. On that occasion Mr. Opper handed me a statement and said that he had prepared the statement based upon his recollection of the transactions.

Mr. Richter: Mark this Government's Exhibit 41 for identification.

Thereupon a statement was marked for identification as Plaintiff's Exhibit No. 41.

Q. Mr. Regan, I hand you Government's Exhibit No. 41—

The Court: For identification.

Q. (Continued) —marked for identification as Government's Exhibit 41 and ask if you can identify that document.

A. Government's Exhibit 41 for identification is the statement which is dated October 16, 1951, which was

handed to me in the offices of the F. B. I., at Chicago, on that date by Mr. Opper.

Q. Whose signature appears on that instrument?

A. This signature appears "William J. Opper" which Mr. Opper identified as being his own signature.

Q. Will you read that instrument to the jury?

Mr. Kelley: Are you going to offer it?

Mr. Richter: We will offer it.

The Court: Any part of that deleted?

Mr. Richter: No.

The Court: Then it may be admitted in evidence and marked as Government's Exhibit No. 41.

Thereupon said statement was admitted in evidence and marked as Plaintiff's Exhibit No. 41.

Q. Will you read that to the jury?

The Court: No. Pardon me. Just a minute.

Mr. Kelley: May the record note the renewal of the objection at this time?

The Court: Oh, yes. That goes in over the objection.

Mr. Richter: You may read it.

The Court: No. Pardon me. I don't want him to read it right now. We are going to adjourn now. It is one o'clock. Now we will recess the further hearing of this cause until 2 o'clock this afternoon. During this interval bear in mind my usual admonition.

Everybody sit down. Court is not adjourned. This is not a moving picture house, you understand, it is a court room.

During this interval bear in mind my usual admonition and return here, if you please, at 2 o'clock this afternoon.

Adjourn court until 2 o'clock this afternoon.

Thereupon the further proceedings in the trial of this cause were adjourned until 2 o'clock of the afternoon of the same day.

Afternoon Session.

Wednesday, May 21, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

(At the Bench, out of the hearing of the jury.)

Mr. Kelley: We know that the government is not required in any way and sometimes cannot indicate about the amount of time that they still expect it is going to take, but we don't want to ask for any continuances when it comes time to put in our case, if that can be avoided by a little discussion in advance. We will have the problem of getting out some subpoenaes and we just wondered if you could give us some idea of when you think we will have to go on with our case, so we could get our subpoenaes out accordingly.

Mr. Aug: It is our hope that we would be through with our case by Friday at the latest.

The Court: The question is, when do you Gentlemen think the government will rest?

Mr. Aug: I think we will rest by Friday at the latest, and perhaps with a stroke of good luck and a brief cross-examination we may finish tomorrow.

The Court: You think they should have some witnesses here on Friday?

Mr. Aug: I would say in an excess of caution, yes.

The Court: On Friday, the 23rd.

Mr. Aug: I would say there is a chance, your Honor, without being committed to it, of course, so far as the

direct examination is concerned, we can finish our case tomorrow.

Mr. Kelley: Some of our witnesses will be from out-of-town.

The Court: I am perfectly willing, of course,—I am very anxious, if I can, to get the matter disposed of before Memorial Day, otherwise we will have to have another long spell in there.

Mr. Aug: I think we would have to take the risk of inconveniencing some witnesses then. We have had ours standing around the halls for days. That is just part of the trial of a case you can't forecast. I would think there is a good chance that they would put on some testimony by Friday.

Mr. Kelley: We don't want to ask too much, but at the close of the government's case I would appreciate at least an hour to deal with some of these cases we haven't yet discussed.

The Court: Now, Mr. Kelley, I haven't the slightest objection, you Gentlemen, all of counsel,—I have no objection, whenever the government finishes, we will adjourn until Monday morning. That will give you plenty of time to discuss your case among yourselves and to line up your witnesses.

Mr. Kelley: We can pretty well assure the Court that within that span we might probably finish by the 30th.

Mr. Aug: Could we have this understanding: In order that we do not waste a lot of time, we anticipate, of course, as you have I know, some kind of motion at the end of our case. If we are at a period of rest, that will give them adequate opportunity to present their motion and us to answer it. I think that should take place on Friday.

Mr. Kelley: Suppose you don't rest until late Friday.

Mr. Aug: Then we will have to go over.

The Court: When the government rests, assuming they do on or before Friday, whatever time it is, I will adjourn the case until Monday morning. If we run into Memorial Day it will just have to run into it. We didn't fix that date ourselves. That was fixed before our time. I can't come down because it is in red letters. Government officials must stay home. You know that, too, Mr. Kelley.

Mr. Kelley: Yes, I do, your Honor. I always thought it was very unfair.

The Court: We will do that, Gentlemen. We are not going to get rushed in the case.

Mr. Kelley: That is helpful. We can get our subpoenaes out for that day.

The Court: That gives you plenty of time.

Mr. Kelley: All right.

(In the hearing of the jury:)

MR. FRANCIS A. REGAN resumed the witness stand and testified further on **direct examination**, as follows:

By Mr. Richter:

Q. Will you read Government's Exhibit No. 41 to the Court and Jury?

A. This exhibit bears the date October 16, 1951; is addressed to "Federal Bureau of Investigation, 105 West Adams Street, Chicago, Illinois. Attention: Mr. Regan. Gentlemen:

"I have been asked to submit a statement relating to my so-called dealings with Robert Hollifield.

"In the winter of 1950, as best I can recall, I was at Dayton, Ohio, then visiting with the firm of Cappel & MacDonald & Company with whom I had numerous business transactions. At the office of this firm I met Mr. Hollifield and in a discussion about things made for the

armed forces, Mr. Hollifield then stated that the next time I was in Dayton to visit him at Wright Field. Sometime later I went to Wright Field and saw Mr. Hollifield and had a social visit with him. We discussed no particular matters of any kind. Sometime later when I visited Mr. Hollifield at Wright Field I discussed with him the possibility of making a wrist compass that was being required by the armed forces as well as using my ¾ inch compass in any future kit. While there I saw photographs of numerous items being used and some of the items seen by me I recognized as items that I furnished to prime contractors.

"Sometime in the spring of 1951 I learned about an objection to a goggle and decided while in Dayton, Ohio, visiting Cappel & MacDonald & Company to discuss the matter with Mr. Hollifield. At that time Mr. Hollifield stated that he did not know what objection was being made and that if I cared to know specifically what that objection was to talk with someone in the optical department. Mr. Hollifield and myself then went to the optical department and I tried to learn what specific objection was being made and was informed that there was some slight difference in the lens specification.

"I wish it to be understood that at no time had I requested Mr. Hollifield to do anything on my behalf. I was making no sale to the government as my sales were at all times confined to prime contractors, who I understand obtain approvals.

"Sometime in the early part of 1951 Mr. Hollifield had been in Chicago and our respective families visited socially. Sometime in April, as best I can recall, Mr. Hollifield communicated with me and indicated that he was hard pressed financially and although I felt no moral or legal obligation to Mr. Hollifield in any manner, I indicated to him that if I could help him I would try to do so. When he visited Chicago he called upon me and stated that the reason for his financial distress was that he had to meet a mortgage on his home of approximately $1200.

Being mindful of the fact that I could help him financially and being charitable I gave Mr. Hollifield $1000 which he promised to repay when he was financially able to do so and a few weeks later gave him $200. I realize now the foolishness of my act but had no motive in so doing except in making him a loan. Very truly yours, William J. Opper."

Mr. Svoboda: If the Court please, I wish again to ask that you admonish the jury in reference to this written statement as to Hollifield.

The Court: Members of the Jury, I don't think it is necessary, but, of course, I like to comply with the request of counsel, and that is to advise you that this is a statement by Mr. Opper and as such you can consider that and any other statements that Mr. Opper made—has made to this or any other witness, if such there be, as against Mr. Opper and give that testimony such weight as you deem it properly deserves, so far as Mr. Opper is concerned, but you must not consider it as any testimony reflecting on Mr. Hollifield, because Mr. Hollifield was not present; it was made in his absence. Mr. Opper can speak for himself just as Mr. Hollifield spoke for himself, but neither one can speak for the other. So, you may consider this testimony along with all the other testimony in the case, as far as Mr. Opper is concerned and as far as he is concerned only and give it such weight as you deem it properly deserves and arrive at your common conclusion and verdict.

Q. Mr. Regan, what occurred after Mr. Opper gave you that letter on October 16th?

A. I first read the letter and then I told Mr. Opper that I didn't believe that the letter in that form was in agreement with the understanding that we had when we terminated the previous interview. I told him that it lacked detail and that I would like to obtain the detail that he had not placed into that letter, in the form of a written statement at that time. Mr. Opper stated that he

felt that the letter in that form was sufficient, that he was cooperative with the investigation and that he did not want to put any further information in writing.

Q. Now, were you proceeding or was there anything else you wanted to say?

A. That is what happened immediately afterward.

Q. What, if anything, was said about the date upon which Opper gave Hollifield, according to that statement, $1000?

A. At that time I examined some documents that Mr. Opper brought into the office, which consisted of bank statements and canceled checks and I asked him approximately what the date was that he had the $1000 transaction with Mr. Hollifield. He said that he recalled that it was on Saturday, in the month of April. I examined his bank statements and noted that on these statements there was one charge or withdrawal in the amount of $1000. I examined his canceled checks and found the canceled checks corresponding with that $1000 withdrawal. That check was one dated April 13, 1951, in the amount of $1000, payable to cash and endorsed by—with the name William J. Opper. I asked him what connection, if any, this $1000 check had with the $1000 transaction with Mr. Hollifield. Mr. Opper stated that it could in part cover the $1000 transaction. He stated that he had the custom or habit of keeping a sum of money in the apartment and that he used funds from this fund to turn over to Mr. Hollifield and he replenished this fund with the proceeds of the check. I noted that the check was dated April 13, which was Friday.

Mr. Opper stated that prior to the visit of Mr. Hollifield in Chicago, he had received a 'phone call from Mr. Hollifield, at which time Mr. Hollifield mentioned a financial problem. Mr. Opper stated that the bank with which he did business, the bank in which he had his account, didn't have banking hours on Saturday and, therefore, the check in question was cashed on Monday. This check in the upper left-hand corner bore a notation "N. Y. Exp."

I asked him the significance of this notation. He stated that that purported to represent "New York expense" and that about that time he had taken a trip to New York. I asked him if the funds withdrawn from the bank by that check were used for a trip to New York and he stated that the check was used to replenish a fund which had been depleted with the $1000 payment to Mr. Hollifield and that about that time or subsequent he took this trip to New York. That is the substance of my conversation on October 16th.

Mr. Richter: Mark this as Exhibit 42 for identification.

Thereupon a photostat of a check in the amount of $1000 was marked for identification as Plaintiff's Exhibit No. 42.

Q. I hand you a check marked for identification—

The Court: It is a photostatic copy.

Q. (Continued) —photostatic copy of a check marked for identification Government's Exhibit No. 42, and ask you if you can identify that as being a copy of the check to which you previously referred.

A. This is a copy of the check to which I referred.

Q. How much is it?

A. This check is in the amount of $1000.

Q. Dated what?

A. Dated April 13, 1951.

Q. Payable to whom?

A. Cash.

Q. Signed by whom?

A. William J. Opper.

Mr. Kelley: Are you offering that? You are reading it into the record.

Mr. Richter: We will offer it in evidence. Do you want to see it?

Mr. Kelley: Yes. May I inquire on the voir dire as to this exhibit?

The Court: Yes, certainly.

By Mr. Kelley:

Q. Mr. Regan, a few moments ago I undertook, while listening to your testimony in one respect to write down exactly what you said. As I recall it, when you asked Mr. Opper concerning what happened to the proceeds of this check, and now I quote, you stated that he replied, it could in part constitute payment or repayment to the fund from which he had obtained the $1000. Is that what he said?

A. That is right.

Q. That it could constitute that?

A. He used the word "could".

Q. He didn't say that it did?

A. No, sir.

Q. There is nothing on this document—nowhere on that document is there anything to indicate any connection with Mr. Hollifield, is there?

A. I see nothing that I can recognize.

Q. Now, you undertook to fix the date, that Mr. Hollifield made a trip to Chicago, in April, did you not?

A. Could you repeat that question?

Q. You undertook to establish the date that Mr. Hollifield made an airplane trip from Dayton to Chicago in April of 1951?

A. I know nothing about such a plane trip. I undertook to establish the date that the $1000 transaction took place.

Q. Did you not then or since, did you not bear in mind that the F. B. I. through other agents than yourself had interrogated Mr. Hollifield and had determined that he took an airplane, T. W. A., from Dayton to Chicago, on the 14th of April?

A. I don't believe I knew that.

Q. You didn't know that then?

A. I don't believe I knew it up to now.

Q. Obviously that check was not cashed until after the 14th of April; isn't that true?

A. That is right.

Q. When was that check cashed?

A. This check was cashed on the 16th of April.

Q. What does it show on the back?

A. It bears a clearing-house stamp of the National Boulevard Bank, April 17th.

Q. You interviewed officials of that bank, did you not?

A. I did not.

Q. Someone from your office did, as far as you know, didn't they?

A. To my knowledge, they could have.

Q. Do you notice the date of April 16th on there, on that check?

A. Specifically, no, sir.

Q. Well, I mean specifically, is the date April 16th anywhere on that check?

A. No, sir.

Q. Then why did you say it was cashed on the 16th?

A. I had two reasons for saying so. One is the charge appeared on the bank statement dated the 16th, and the other is that the banking policy, which in substance is that a clearing-house stamp bears the next date. A check stamped on the 16th would bear the date of the 17th.

Q. That is subject to a rare exception, is it not, that it might bear the same date that it was cashed?

A. Within my experience, I know of no exceptions.

Q. The fact remains, that check was not cashed until two days after the 14th of April; that is to say, the 16th of April.

A. That is right.

Mr. Kelley: We object to the introduction of the check, in that it doesn't tie up with the defendants.

The Court: The objection is overruled. The check is admitted in evidence. Whether or not it is a circumstance that tends in any way to show anything in this case, is a question entirely for the jury to determine. You may take what proof there is about it and the check and you may decide, Members of the Jury, what relationship, if

any, that check has to the statement that this witness has testified Mr. Opper made, both orally and in writing. It is offered merely as a circumstance for your consideration, to be given such weight by you as you deem it properly deserves. It is admitted in evidence and marked as Government's Exhibit 42 in evidence.

Thereupon said photostatic copy of check of $1000 was admitted in evidence and marked as Plaintiff's Exhibit No. 42.

Mr. Richter: Mark this for identification as Government's Exhibit No. 43.

Thereupon a photostatic copy of a bank statement was marked for identification as Plaintiff's Exhibit No. 43.

Q. Mr. Regan, you referred to a bank statement. Now, where did you get such a bank statement?

A. I obtained the bank statements from Mr. Opper.

Q. What did you do with it when you got it?

A. I asked Mr. Opper if he had any objections if I had photostatic copies made of the bank statement and check. He said he didn't and I then had another agent take these documents to the machine in the Chicago office and they made photostatic copies of the statements and the originals and photostats were then brought back to me and I returned the originals to Mr. Opper.

Q. Did you check the photostats against the originals?

A. I did.

Q. I hand you an instrument marked Government's Exhibit 43 and ask you if you can identify that as the photostatic copy of the bank statement which you received from Mr. Opper?

A. That is a little difficult. I can identify the statement covering the month of April.

Q. Well, the statement covering the month of April. Limit it to that.

A. I recognize that as the copy of the original document that I examined in the Chicago office.

Mr. Richter: If the Court please, we offer in evidence so much of this statement as applied to the month of April 1951.

Mr. Kelley: First, we object to its introduction at all for the same reasons we objected to the check; secondly, we object to its being introduced in part and confined to the month of April. We feel if it should go in, it should be present in its entirety. O.. objection primarily goes to their admission in the first place.

The Court: Let it be marked Government's Exhibit 43 in evidence, the whole document. Now, you may read such portions of it as the government cares to bring out at this time, or all of it, if you please, and the other side may do the same.

Thereupon said statement was admitted in evidence and marked as Plaintiff's Exhibit No. 43.

Q. Mr. Regan, will you address yourself to the sheet of this statement referring to the month of April 1951 and direct the attention of the Court and the Jury to the specific item about which we have been talking?

A. The specific item is one in the amount of $1000, in the first column bearing the title "Checks and other debits listed in order of payment," and is opposite the date, April 16, 1951.

Q. Is that all with relation to that item?

A. It is in the amount of $1000.

Mr. Richter: You may have the witness.

Cross-Examination by Mr. Kelley.

Mr. Kelley: Would the Court give me one minute, please, to go over my notes?

The Court: Certainly.

Q. Mr. Regan, as I understand it, you interrogated Mr. Opper on three occasions, October 10th, 12th and 16th in 1951?

A. Yes.

Q. That is correct, and on no other occasions?

A. On no other occasions.

Q. During the course of those three interviews, did you maintain a log?

A. One was prepared immediately thereafter.

Q. Immediately after each meeting?

A. Yes, sir.

Q. Do you have that with you?

A. I do not.

Q. Where is it?

A. I don't know.

Q. When did you last see it?

A. When I was an employee of the F. B. I. I will take that back. I have seen it since then.

Q. Where was it when you saw it?

A. In the office of the F. B. I. in Dayton here.

Q. Here in Dayton?

A. Yes, sir.

Q. And that was when?

A. Approximately a week ago Tuesday.

Mr. Kelley: We request the government to supply the log.

Q. Did you keep any notes in addition to the log,—make any notes during the course of the interviews themselves?

A. The agent who accompanied me and assisted me in the interview maintained some notes.

Q. In the first interview that would have been special agent—

A. Donaldson.

Q. Where is he today?

A. In Dayton.

Q. Is he assigned here?

A. No.

Q. He is here in connection with this trial?

A. Yes, sir.

Q. You don't have, of course, those notes?

A. I don't, no.

Q. Mr. Donaldson's?

A. No, sir.

Q. Was the same thing true as to the making of the notes during the interrogation of October 12th?

A. Yes, sir.

Q. They were made by your associate?

A. Yes, sir.

Q. That was Mr. Donaldson, I think, then too?

A. Yes, sir.

Q. But there was another associate agent on the 16th?

A. On the 16th there was, but it is my recollection no notes were made.

Q. By either yourself or that agent?

A. Yes, sir.

Q. Now, I think that you stated that during the course of your conversations with Mr. Opper, he told you that approximately two years prior to the time that you were speaking to him, that he had been to Wright Field and had left his name at the Field. Would you state that again? What did he tell you in that respect?

A. He stated that he called at Wright Field for the purpose of leaving his name or identity as a source of compasses.

Q. Did he tell you that at or about, or shortly prior to the time that he so called at Wright Field, which I take it would have been in 1949, if it was two years before your conversation,—did he tell you that he had purchased the dies required in the manufacture of a compass that had been owned and used by the Waltham Watch Company in making compasses?

A. In substance, he did make reference to such a transaction, but it is my recollection that he mentioned he was in partnership, or somehow joined in that transaction with another individual, who later bought out his particular interest in the manufacturing operation. But I recall a reference to such a transaction and the name of the Waltham Watch Company.

Q. And did you understand from what he said about his visit to the Field, approximately in 1949, that he was making it clear that from then on he was able to supply that compass that Waltham had theretofore supplied the government, when it needed compasses?

A. No, sir. He made no reference to supplanting or replacing Waltham as a source of supply.

Q. But you did understand that he went out to the Field to state that "I, Opper, can furnish some compasses"?

A. Yes, sir.

Q. And you didn't associate that with his purchase of the Waltham dies?

A. No, sir.

Q. Did he tell you that Waltham had manufactured compasses and furnished them to the government prior to the time he bought these dies?

A. No, sir.

Q. Now, he did state, however, I believe, as you testified, that at sometime he received inquiries from various manufacturers or contractors, or would-be contractors, inquiring as to his ability to furnish a compass. Did you testify in substance to that?

A. Yes, sir.

Q. Would you enlarge upon it and tell us how that subject came up and what you said and what Mr. Opper said about that?

A. He said he received such inquiries and among the companies making the inquiries were Cappel-MacDonald, S. Buchsbaum.

Q. Did he mention the names of several other companies who he also received some inquiries from?

A. I can't recall any specific names, if he mentioned any others. I recall those names.

Q. He said he received inquiries, among which were inquiries from Buchsbaum and Cappel-MacDonald. Isn't that the way you put it this morning?

A. Yes, sir.

Q. Did he fix the time? Confine ourselves for the moment when he received such inquiry from the Buchsbaum or Cappel-MacDonald Company. Did he suggest the time when he got such an inquiry?

A. He suggested it by stating it would be not longer than two years previous and not later than October 1950.

Q. What led you to believe it wouldn't have been later than October of 1950?

A. He stated that October 1950 he met Hollifield at Cappel-MacDonald where he called in connection with his compasses.

Q. I intended to ask that. I think it was overlooked this morning, as to what date he finally said he met Mr. Hollifield. I believe it was asked on one of the first interviews. He didn't give the date but he did finally tell you the date he met Mr. Hollifield in the place.

A. He mentioned the month of October.

Q. And although he mentioned the month of October, he mentioned no date?

A. That is right.

Q. Mention the place?

A. Cappel-MacDonald.

Q. In Dayton?

A. In Dayton.

Q. So that is how you assume it wouldn't have been later than that?

A. Yes, sir.

Q. So, thus having received inquiries, did he tell you that when he received an inquiry from the Cappel-MacDonald Company about his ability to furnish a compass that he had no personal acquaintance with anyone in that concern when he got that inquiry?

A. He didn't mention that.

Q. To be more specific, I believe you testified that he called upon Mr. Buchsbaum, after Mr. Buchsbaum had made inquiries of him concerning the compass?

A. Yes, sir.

Q. And that during that interview, when he came to

see Mr. Buchsbaum, at Mr. Buchsbaum's request, Mr. Buchsbaum told him that among the other components that these kits would require would be some goggles; is that right?

A. Yes, sir.

Q. And that Mr. Buchsbaum asked him, Mr. Opper, if he could look around and see if he could find such goggles. Correct?

A. Yes, sir.

Q. And that Mr. Opper said he would try and that, as you put it, he did secure some samples of goggles?

A. Yes, sir.

Q. Did he tell you then that he turned over to Mr. Buchsbaum a sample of such goggles as he was able to locate in the market?

A. Yes, sir.

Q. Did he also tell you that of those samples, he furnished Cappel-MacDonald with some?

A. Yes, sir.

Q. You understood that as of that time when inquiries were made of him about a compass by Buchsbaum, Cappel-MacDonald and others, that the bidding was in the process?

A. Bids were in the process.

Q. Being made for certain kits out here at the Field, you understood that, did you not?

A. I understood it to the extent that Mr. Opper stated that these companies were asking him for quotations on these compasses which would be a component part of these kits.

Q. Did you understand that at the time they were asking him for quotations, that they had contracts, or were getting the bids ready to submit, in order to get a contract, or didn't you know about that?

A. It would be my understanding, if I gave it a thought at the time, that the bids would be in the process of being assembled.

Q. And that there would be various people interested

in the same item, those people being prospective bidders—right?

A. That could be.

Q. Now, did he in that respect tell you—I think you said he stated he also furnished a sample he had been able to obtain to Cappel-MacDonald?

A. He furnished a sample of the goggles to Cappel-MacDonald.

Q. You understood there were two kinds of goggles, sun goggles and ski goggles, didn't you?

A. I recall Mr. Opper making such a reference to a difference in goggles that he did not pursue any further, during the course of the interview.

Q. And you didn't ask or learn whether it was a ski goggle sample or a sun goggle sample, or both, that he submitted to Buchsbaum?

A. I didn't ask him and I can't recall him telling me.

Q. The same as to the samples he submitted to Cappel-MacDonald?

A. Yes, sir.

Q. Now, he did tell you more about the samples that he furnished to Cappel-MacDonald, in the sense he told you how he obtained them from him, did he not? In other words, the manner and means by which he delivered samples to Cappel-MacDonald of goggles?

A. I can't recall specifically discussing that with Mr. Opper.

Q. Will it refresh your memory if I mention or suggest to you that Cappel-MacDonald sent an airplane to Chicago especially to pick up these samples a day before the bids were to close?

A. No, sir, he didn't tell me that.

Q. You didn't discuss that at all with Mr. Opper?

A. No, sir.

Q. Did Mr. Opper state to you that the goggles, that the sample goggles he had furnished to Cappel-MacDonald were by them taken to the Field and shown to the men in the Land Survival Unit?

A. He stated that was done by Cappel-MacDonald and Buchsbaum.

Q. Didn't he indicate that it was first taken by Cappel-MacDonald and that the goggles were found not satisfactory, because they didn't have an extra plastic lens in the case?

A. No, sir.

Q. He didn't distinguish the visit of Mr. Buchsbaum or Cappel-MacDonald in connection with securing approval?

A. No, sir.

Mr. Richter: May it please the Court, I think the cross-examination is going quite a bit beyond the direct testimony.

The Court: I will overrule it. Go ahead.

Mr. Kelley: I felt it was proper to go beyond it within limits of relevancy, your Honor.

The Court: Very well. I have overruled the objection. I can't do any more.

Q. Mr. Regan, you say that you obtained the photostat, which is in evidence Government's Exhibit 42, and the photostat of the bank statement, which is Government's Exhibit 43 in evidence,—that you obtained those, the originals of which these are photostats, from Mr. Opper?

A. Yes, sir.

Q. And with his consent you photostated them?

A. Yes, sir.

Q. Now he brought those documents to your office at your request, didn't he?

A. Yes, sir.

Q. And he appeared willing, at all times, to furnish you with them?

A. He appeared willing on the one occasion that I asked him for them.

Q. You didn't have to get any process to get them, did you?

A. No, sir.

Q. He brought them to you voluntarily and willingly, too, didn't he?

A. Yes, sir.

Q. Told you you could copy from them?

A. He said I might make a copy of them.

Q. Yes, photostats. He let you do that without objection?

A. Yes, sir.

Q. Since his Honor admitted the entirety of Plaintiff's Exhibit 43, you may refer and because you were asked about it—I don't suggest anything more than that—you were asked about a $1000 check that appears on there. Now look at all of them and tell me whether in the amount of $1000 that would appear to be an unusual transaction for Mr. Opper.

Mr. Richter: If the Court please, the instrument speaks for itself.

The Court: Do you object to it?

Mr. Richter: Yes, we will object to it.

The Court: Sustain your objection. You are asking this man to give us his opinion about what appears there.

Mr. Kelley: I will withdraw it as an opinion. The witness was permitted to look at the document in evidence and say what was on it as to the $1000.

Q. Will you go through that, please, Mr. Regan, and whenever you find a check that cleared that account in the amount of $1000 or more, will you state it and give its date?

The Court: That is all right. You may do that.

Mr. Richter: I object to that as being immaterial to the issues in the case.

The Court: Of course, the whole document is in evidence and, therefore, it is all in evidence whether the witness answers these questions or whether he doesn't. If

you wish to ask him that, you may do so. The jury will take it all and they will have it in their jury room and they can see for themselves. Nevertheless you may answer the question, if you can. See if you see any other checks.

Q. For $1000 or more?

A. $1000 or more?

Q. Yes.

A. If I read those $1000 or more, that would take about fifteen minutes.

Q. There are a lot of them.

The Court: That is all right. Take all the time necessary.

Q. There are many items of $1000 or more there?

A. I counted seven items of $1000 in nine months.

Q. But you didn't look at the ones for more than $1000?

A. Numerous for more than that.

Q. That is sufficient for my purpose, since it is in evidence. I was confused. I don't know whether I heard correctly or not, in recalling something that Mr. Opper said about first meeting Mr. Hollifield in Mr. Buchsbaum's office. By that you mean the first time you ever saw him in Chicago?

A. I believe that I so testified. The first time he met Mr. Hollifield in Chicago was at the office of S. Buchsbaum.

Q. Did he fix the date of that?

A. I can't recall the date, if he so fixed it and I don't believe he did.

Q. He did state that Mr. Hollifield was in Chicago on business with Buchsbaum; is that right?

A. Yes, sir.

Q. On which of the three interviews did you put a question to Mr. Opper as to which he responded he would like to talk with his lawyer before talking further on that subject?

A. That was at the end of the first interview, October 10th.

Q. That was the end of the first interview. And thus after having talked with his lawyer, it was after he talked with him that he came back twice and willingly furnished you with his bank statements?

The Court: Do you know whether he talked to a lawyer or not? Did he tell you he talked to a lawyer?

The Witness: It is my understanding.

The Court: Not your understanding. Did Mr. Opper tell you he talked to a lawyer?

The Witness: My recollection is so hazy on that, I couldn't say.

The Court: The reason I say that is, the question presupposes that is what he had done. If you want to ask him the question whether he saw a lawyer. You assume in there that is what he had done. I don't think that is a fair question.

Q. You won't say, Mr. Regan, that he didn't tell you he talked to a lawyer between the first and second conversations?

A. That is my recollection, that he said he did not. I hesitate to say so.

Q. Does the name of any Chicago lawyer come to your mind at any time in your discussion?

A. At no time did he mention the name of any attorney.

Q. You are sure of that?

A. I am positive.

Q. You can't state whether he did or didn't state he had seen his attorney?

A. Because of my hazy recollection, I hesitate to say whether he did or didn't say.

Q. But whether he did or not, he did tell you at one time he wanted to see his attorney before going further with that interview?

A. Yes, sir.

Q. And after that he came back willingly twice?

A. Yes, sir.

Q. And willingly furnished you his bank statement and his checks?

A. Yes, sir.

Mr. Kelley: That is all.

Mr. Richter: That is all, Mr. Regan.

And thereupon

MR. JOHN J. DONALDSON, being duly sworn, testified as follows:

Direct Examination by Mr. Richter.

Q. Will you state your full name, please?

A. John J. Donaldson.

Q. Where do you live, Mr. Donaldson?

A. I live in Park Forest, Illinois.

Q. What is your occupation?

A. I am Special Agent, Federal Bureau of Investigation.

Q. How long have you been a Special Agent, Federal Bureau of Investigation?

A. Almost four years.

Q. Have you ever met the defendant William J. Opper in this case?

A. I have.

Q. Can you step down and place your hand on his shoulder for the purpose of identifying him?

A. I will. (Witness does as requested by counsel.) This is Mr. Opper.

Q. Will you state whether or not you had a conversation with Mr. Opper on or about October 29, 1951?

A. I did.

Q. What did you say to him preliminary to your conversation with him on that date?

A. I advised Mr. Opper—

Mr. Kelley: Excuse me. May the time and place be fixed where this took place and who was present?

Q. Where did this interview take place?

A. The interview took place in the Chicago F. B. I. office.

Q. Who was present?

A. I was present and Special Agent Ralph C. Dalton.

Q. Now will you tell the Court and the Jury what preliminary discussion took place between you and Mr. Opper at that time?

A. I first advised Mr. Opper that anything he said could be used against him, that he had the right to an attorney at the interview, that we make no threats or promises, and we couldn't. He was willing to continue with the interview and I asked Mr. Opper concerning his sales of goods to both Cappel-MacDonald, of Dayton, and S. Buchsbaum and Company, of Chicago. At that time, he furnished me with invoices which he stated reflected his sales to both companies, since September of 1950.

Q. And what occurred after that?

A. After that I asked Mr. Opper if he would be willing to restate the details of his loans to Mr. Hollifield in the amounts of $1000 and $200. He said at that time that he did not desire to restate the details of those loans, that he didn't recall the details as he had related them on prior interviews.

Q. And what occurred after that?

A. I then asked Mr. Opper if he would be willing to give me a signed statement to the effect that the $1000 loan and the $200 loan were the total amount of the loans he had extended to Mr. Hollifield. He stated he saw no objection to giving such a statement, but he desired to consult with his attorney before so doing.

Q. What happened then?

A. Mr. Opper left the office and on November 1st he contacted me by telephone.

Q. And what did he say?

A. He said at that time that he had consulted with his attorney and had been advised it wasn't necessary to give a statement.

Q. Anything occur after that?

A. No, nothing did.

Mr. Richter: You may have the witness.

Cross-Examination, by Mr. Kelley.

Q. The date, Mr. Donaldson of your first—By the way, this wasn't your first meeting with Mr. Opper, was it?

A. No, it wasn't.

Q. You had been present at the interview of October 12th, I think it was.

A. I was.

Q. And you had been present also at the one following that. First I should say October 6th.

A. That is right.

Q. Then October 12th?

A. That is right.

Q. And you were not there on the 16th?

A. I was not.

Q. You had learned he had furnished a statement to the government on the 16th?

A. I had, yes, sir.

Q. Then you saw him again for the third time on the 29th?

A. Yes.

Q. In the presence of John Dalson?

A. That is right.

Q. Was it on the 29th he furnished you with these invoices?

A. It was.

Q. Had you previously or anyone else in the Bureau asked him to bring invoices to that meeting?

A. I had requested.

Q. Did you request him or his lawyer?

A. I had requested Mr. Opper.

Q. Did you telephone him?

A. I telephoned him.
Q. How long before the 29th?
A. Within two days, three days.
Q. And asked him to come down and bring in all of his invoices to Cappel-MacDonald or Buchsbaum?
A. That is right.
Q. And he did just that?
A. He did.
Q. Turned them over to you?
A. He did.
Q. Permitted you to photostat them?
A. He did.
Q. Without restriction?
A. That is correct.

Mr. Kelley: That is all.

Mr. Richter: That is all, Mr. Donaldson.

Mr. Kelley: Could we have a five-minute recess?

The Court: Yes, sir. Take a little recess, Members of the Jury.

Thereupon a five-minute recess was had.

The Court: Call your next witness.

And thereupon

HOWARD HOLTON, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. State your full name, will you, please?
A. Howard Holton.
Q. How do you spell it?
A. H-o-l-t-o-n (spells).
Q. Where do you live, Mr. Holton?
A. Fairborn, Ohio, 436 Wallace drive.
Q. Where are you employed, Mr. Holton?
A. Wright Field.

Q. How long have you been employed at Wright Field?

A. Since November 1945.

Q. When you entered employment in 1945, were you in the military service?

A. I was.

Q. In 1945?

A. Yes, sir.

Q. Now, in what capacity did you act in the year 1945, at Wright Field? What were you doing?

A. I was Chief of the Test Unit, Rescue and Survival Branch of the Personnel Equipment Laboratory.

Q. How long did you continue in that capacity?

A. Until March of 1947.

Q. In March 1947 what were you doing?

A. The personnel equipment lab. was dissolved. We were transferred to the Aero Medical Laboratory and I was assigned as Arctic Test Chief.

Q. That is in 1947?

A. In 1947.

Q. Are you still in the military service?

A. I was.

Q. How long did you continue in that capacity from the year 1947?

A. Until 1950, January 14th.

Q. What happened in January of 1950?

A. I got out of the service and came back as a civilian.

Q. Now, from the year 1947 to January, 1950, did you have the same type duty at Wright Field?

A. No. For 18 months I was designer of new flight feeding equipment, in the Physiology branch of the Aero Medical Lab.

Q. When were you transferred out of that branch?

A. January of 1949.

Q. Is that January 1949?

A. Yes.

Q. Where did you go after January of 1949?

A. I went to school, Aero Technological School, in Florida, for four months.

Q. Then what did you do?

A. I was liaison officer for Aero Medical Laboratory until I was relieved of my commission.

Q. When did this take place?

A. January of 1950.

Q. In January 1950 did you again take up employment at Wright Field?

A. I didn't take up employment until April.

Q. April 1950?

A. Right.

Q. And you were a civilian, is that correct?

A. That is right.

Q. Now, in April 1950, what was your employment at Wright Field?

A. I was hired as designer of aviation equipment in the Aero Medical Laboratory.

Q. Did you go to work in the Aero Medical Laboratory?

A. I did.

Q. How long did you have that employment?

A. Until now.

Q. In October of 1950 where were you employed?

A. I was assigned to the Medical Sanitation Studies and Equipment Unit of the Medical Specialties Branch, Aero Medical Laboratory.

Q. Who was your immediate superior at that time?

A. Major Summers.

Q. Was Mr. Hollifield connected in any way with your employment at that time?

A. Not at that time.

Q. Were you subsequently transferred to Mr. Hollifield's unit?

A. I was.

Q. And when did that transfer take place?

A. Either the last week of October or the first week of November of 1950; it was in that period.

Q. And previous to that Mr. Hollifield was not your superior; is that correct?

A. He was not.

Q. After that time was he your superior?

A. He was.

Q. He was your immediate—

A. My unit chief, yes.

Q. You were, of course, under Mr. Hollifield?

A. I was.

Q. Do you know William J. Opper?

A. I do.

Q. Would you step down off the stand, please, and place your hand, first, on the shoulder of Mr. Hollifield, identify the person in this room whom you know as Mr. Hollifield?

A. (Witness places his hand on the shoulder of Mr. Hollifield.)

Q. Then will you please place your hand on the shoulder of the man whom you know as William J. Opper?

A. (Witness places his hand on the shoulder of Mr. Opper.)

Q. Mr. Holton, can you tell the jury when you first saw Mr. Opper?

A. In the early part of October 1950.

Q. Early part of October 1950?

A. Yes, sir.

Q. Where did you see him?

A. In the Land Survival Unit of the Aero Medical Lab.

Q. Is that Mr. Hollifield's unit?

A. That is right.

Q. At the time were you employed in Mr. Hollifield's unit?

A. I was not.

Q. Did you see Mr. Opper subsequent to this time?

A. Yes.

Q. On how many occasions?

A. Three or four times.

Q. After you started working in Hollifield's unit, which you have placed in the last week of October or first week of November, did you have occasion to have anything to do with the approval of a ski, mountain goggle?

A. I was asked to take a pair of goggles to the Aviation unit to have them checked.

Q. Who asked you to take this goggle?
A. Mr. Hollifield.
Q. Did you take them?
A. I did.
Q. Who did you take them to?
A. Mr. Strand, chief of the division.
Q. What did you do while he was checking them?
A. Took them to his office, gave them to him, asked him if he would check them and took them back to Mr. Hollifield.
Q. Is this all one transaction?
A. All at one time.
Q. How long did this take?
A. No more than a half hour.

Mr. Aug: Mark this 44 for identification.

Thereupon an instrument was marked for identification as Plaintiff's Exhibit No. 44.

Q. Mr. Holton, I will hand you the instrument marked Plaintiff's Exhibit No. 44 for identification and ask you to examine it please.
A. (Witness does as requested by counsel.)
Q. Are you familiar with the signatures on that instrument?
A. I am.
Q. Are you familiar with the signature of Robert G. Hollifield?
A. I am.
Q. And Randall W. Briggs?
A. I am.
Q. And R. H. Blount?
A. I am.
Q. And Walter A. Carlson?
A. Yes, sir.
Q. Now, do you identify a signature on that instrument as being the signature of R. G. Hollifield?
A. I do.
Q. Do you identify a signature on that instrument as being a signature of Randall W. Briggs?

A. I do.

Q. Do you identify a signature on that instrument as being a signature of R. H. Blount?

A. I do.

Q. Do you identify a signature on that instrument as being a signature of Walter A. Carlson?

A. I do.

Q. I will ask you what the subject matter is referred to in this Routing and Record sheet, marked No. 44 for identification.

A. War Surplus Materials, Contract No. AF33(038) 16916.

Mr. Aug: Your Honor, we would like to introduce into evidence Government's Exhibit No. 44 marked for identification.

Mr. Kelley: Just a moment. The only identification of this document so far is the signature on it. Is that all the government proposes to do by way of identification and relevancy to this case?

Mr. Aug: Your Honor, the contract referred to in this instrument is 16916 which has previously been introduced into evidence in this case.

The Court: Very well. It may be admitted and marked Government's Exhibit No. 44.

Mr. Kelley: I would like to state the basis of my objection. It has not been demonstrated to be sufficient foundation or predicate laid for its admission. The relevancy and materiality has not yet been shown.

The Court: Very well.

Thereupon said Routing and Record sheet was admitted in evidence and marked as Plaintiff's Exhibit No. 44.

Q. Now referring to Government's Exhibit 44, I will refer to the initials at the righthand bottom of the instrument, "RGH". Whose initials are those?

A. Robert Hollifield.

Q. "jg"?

A. Jenny Gatti.

Q. I will refer to the symbols "MCREXD-7". Are you familiar with those symbols, Mr. Holton?

A. I am.

Q. What is the meaning of those symbols?

A. It is the symbols of the Medical Specialties Branch, Aero Med. Laboratory.

Q. Are you familiar with the symbols following the word "to", "MCPPXG-43"?

A. It is procurement division.

The Court: You asked him a question, whether or not he was familiar with those symbols. The answer to that is yes or no. Are you?

The Witness: Yes, sir.

Q. And what do the symbols stand for?

The Court: That is the next question.

Q. Have you stated what the symbols stand for?

A. It is a unit within the procurement division.

Mr. Aug: I would like to read Government's Exhibit No. 44 to the jury. The subject of this Routing and Record Sheet is "War Surplus Materials, Contract No. AF33(038) 16916." After the word "From" are the symbols "MCREXD-7. To MCPPXG-43. Attention: Lieutenant J. Mitchell. Comment No. 1.

"1. Reference attached letter from the Cappel-MacDonald Company, Dayton, Ohio, requesting the approval of the following items:

"Compass, Magnetic Pocket.
"Goggle, Ski, Mountain, Type 1.
"Headnet, Mosquito, 17-1944.

"2. This Laboratory has carefully examined the items submitted by the contractor and the samples appear suit-

able for inclusion in the Type E-1 kit. Although the compass is not in exact accordance with the current specification, little difference can be noted. The goggles are in exact accordance with the current specification. The mosquito headnet is in accordance with the current specification except the stiffener ring is a fibrous material instead of metal. This is suitable.

"Walter A. Carlson, Colonel, USAF(MC), Chief, Aero Medical Laboratory, Engineering Division. RGH/jg.

"1 Incl.: Letter from Cappel-MacDonald, dated 10 November 1950.

"Concurrence: R. G. Hollifield, Randall W. Briggs, R. H. Blount."

Q. Mr. Holton, I will hand you Government's Exhibit No. 25, marked for identification, and ask you to look at both sides of the instrument with respect to the signatures contained thereon.

A. (Witness does as requested by counsel.)

Q. I will asr you if you are familiar with the signature of Walter A. Carlson which appears thereon?

A. I am.

Q. Do you identify that signature as being his signature?

A. I do.

Q. I will ask you if you are familiar with the signature of Norris N. Murray?

A. I am.

Q. Do you identify a signature on there as being his signature?

A. I do.

Q. You are familiar with the signature of Robert G. Hollifield?

A. I am.

Q. Do you see a signature on there which you identify as being the signature of Robert G. Hollifield?

A. I do.

Q. Do you see a signature on there of Randall W. Briggs?

A. I do.

Q. Do you recognize it as his signature?

A. I do.

Q. I will ask you to refer to the subject matter of that exhibit and read what the subject of that Routing and Record sheet purports to be.

A. Contracts AF33(038) 17136 and AF33(038) 17438 S. Buchsbaum & Company.

Mr. Aug: If the Court please, we would like to offer in evidence Government's Exhibit 25 marked for identification.

The Court: Same objections?

Mr. Kelley: Well, I prefer to state it. The defendant Opper objects to the introduction of this document at this time because as of this time it has been in no way connected with the defendant Opper whatsoever.

The Court: Overrule the objection. It may be admitted in evidence. The case has to be put in one thing at a time. We can't put everything in at the same minute.

Mr. Kelley: May I ask, is it being offered with the assurance that it is going to be connected up, or is it maintained that it is? I maintain it has not been.

The Court: It is admitted in evidence marked as Government's Exhibit No. 25.

Thereupon said Routing and Record Sheet was admitted in evidence and marked as Plaintiff's Exhibit No. 25.

Q. Mr. Holton, we will hand you Government's Exhibit No. 26, marked for identification, and ask you to examine the signatures contained therein and state, if you are familiar with those signatures?

A. I am.

Q. Is there a signature on there which purports to be the signature of Randall W. Briggs?

A. There is.

Q. Do you identify that signature as his?

A. I do.

Q. Is there a signature on there which purports to be the signature of Norris Murray?

A. There is.

Q. Do you recognize it as his?

A. I do.

Q. Is the signature of Robert Hollifield on that instrument?

A. It is.

Q. Do you recognize that as his signature?

A. I do.

Q. Will you go to the subject of that Routing and Record sheet, Mr. Holton, and state what is the subject?

A. Goggles, sun, Type 1, specification MIL-G-4085.

Q. Ask you to go to paragraph 1 of that exhibit and ask if there is any reference there to goggles?

A. There is.

Mr. Aug: If the Court please, we would like to introduce at this time Plaintiff's Exhibit No. 26.

Mr. Kelley: To which the defendant Opper objects upon the same grounds as were stated with reference to Government's Exhibit 25.

The Court: Very well. It is overruled. Counsel may now mark Government's Exhibit 26 in evidence.

Thereupon said Routing and Record sheet was admitted into evidence and marked as Plaintiff's Exhibit No. 26.

Q. Mr. Holton, I will hand you Government's Exhibit No. 28 marked for identification and ask you to examine the signatures on that instrument and state whether or not you are familiar with those signatures?

A. I am.

Q. Does the signature of Randall W. Briggs appear on that exhibit?

A. It does.

Q. Is that his signature?

A. It is.

Q. And the other signature is Norris Murray?

A. That is right.

Q. Is that his signature?

A. It is.

Q. I will ask you to state what the subject matter of that Routing and Record sheet is.

A. Goggles, Sun, Type 1, Specification MIL-G-4085.

Mr. Aug: We would like to offer this instrument in evidence at this time.

Mr. Kelley: Same objection as to Exhibits 25 and 26.

The Court: Overruled. Mark it Government's Exhibit No. 28 in evidence.

Mr. Kelley: May I pause to raise a point, be excused to talk with government attorneys for a moment?

Mr. Aug: (After conference with opposite counsel) If the Court please, counsel is suggesting that on the back of Exhibit 28 there is another item and other signatures to which I have not referred. So that it is satisfactory with the government if counsel insists that only that portion of Exhibit 28 which is evidenced by the front page be introduced.

The Court: It is all in evidence, just as it stands.

Mr. Kelley: May I inquire? I don't know if the point is made clear. This document is entire on one side and entirely different transaction is on the other. The identification only went to this sheet. Nothing was said about this at all. It has not been identified in any way. My question is, is the front in?

The Court: Do you object to the introduction of that portion of it that is marked—Mark this Government's Exhibit 28, one side 28-A and the other side 28-B.

Thereupon said routing and record sheet was marked one side Plaintiff's Exhibit 28-A and the other side Plaintiff's Exhibit 28-B, respectively, for identification.

The Court: Which side is which? Let counsel see it.

Mr. Kelley: I am familiar with it.

The Court: Which side of it do you object to going in evidence?

Mr. Kelley: I object, of course, to all of it. All that the government has offered is as to 28-A. They haven't undertaken to identify 28-B.

The Court: I understand. Do you object to the introduction of part of it, that marked Government's Exhibit 28-B?

Mr. Kelley: I won't know until I know, has he offered A or has he offered A and B?

The Court: I understand he is offering both.

Mr. Aug: Yes.

Mr. Kelley: In that case, my objection is to both and I add the other ground, there has been no identification at all as to B.

The Court: Now Gentlemen, let's keep our record straight, if you please. The government offers this document in full but there seems to be some objection to a portion of it, one side of it which is marked 28-B for identification. If the defendant objects to the introduction of that side, I will sustain the objection to the introduction of the part of that exhibit marked 28-B and 28-B may be marked for identification only. The other side marked 28-A is admitted in evidence and is now Government's Exhibit 28-A in evidence. The other part is not admitted in evidence at this time.

Thereupon one side of said routing and record sheet was admitted in evidence and marked as Plaintiff's Exhibit No. 28-A.

Mr. Aug: No further questions.

Cross-Examination, by Mr. Kelley.

Q. As I recall, Mr. Holton, you testified on direct examination that from sometime in April of 1950, at which time in the capacity of a civilian you accepted employment at Wright Field as a designer of aviation equipment in the Aero Med. Lab. up to the present time you have continued in that position just described?

A. In December of 1951 we were transferred to the equipment lab., the only difference being transfer for the whole unit.

Q. Is that within the Aero Med. Lab.?

A. No. The equipment lab.

Q. A different lab. on the same level as Aero?

A. That is right.

Q. That took place in December of—

A. 1951.

Q. 1951. During the interval then from April 1950 to December 1951 you were in the Aero Med. Lab.?

A. That is right.

Q. And that lab. is divided into branches?

A. Right.

Q. How many branches?

A. About eight, I believe.

Q. And the branch to which you were assigned was—

A. Medical Specialties Branch.

Q. Now, Medical Specialties Branch is divided into units, is it not?

A. Right.

Q. To which unit were you assigned?

A. The Land Survival Unit.

Q. And that is the unit that Mr. Hollifield was the head of?

A. That is right.

Q. And I believe that you were transferred to that unit, the land survival unit of which Mr. Hollifield was the head as of the last week in October or first week in November of 1950?

A. That is right.

Q. Now, you had had nothing to do with the land survival unit or its personnel up until that time, the last week of October or first week of November. Correct?

A. Not officially, no.

Q. And you had not occupied office space within that unit or a desk within that land survival unit until then, had you?

A. I had not.

Q. Now, you had been transferred to Mr. Hollifield's unit, the land survival unit, before you met Mr. Opper, hadn't you?

A. No, I was not.

Q. How long before you were transferred had you met Mr. Opper? I want you to speak only as to what you are sure of.

A. It was during the month of October, is all I can be sure of.

Q. Would you say it was early in October or late? Are you able to state that?

The Court: What year?

Mr. Kelley: 1950.

A. 1950. It was in the early part of October or within the first week or ten days of October.

Q. Are you positive of that?

A. I am fairly certain of it.

Q. Now what was the occasion that led to your meeting him?

A. I was advised that he had a glycol dispenser he would like to dispose of.

Q. If it were to be suggested to you that Mr. Opper was never at that Field until after the E-1 contract bids had been filed on the 13th of October, would it still be your testimony that you had met him about the 10th, or at a later time?

A. I couldn't be certain.

Q. In other words, you are not certain as to those dates, when you saw him. It could have been after the 13th of October. Correct?

A. Possibly.

Q. Now you say he had a glycol dispenser?

A. Right.

Q. Who had told you that?

A. He told me that when I met him.

Q. How did you meet him and where were you at the Field?

A. I was working in the Medical Sanitation Studies and Equipment Unit, of the Medical Specialties Branch, and it was my job to find instruments or equipment that would sanitize aircraft and this did fall in that category and he knew that I was familiar with that equipment and asked to speak to me.

Q. And I think you told me when I talked to you about this you were then in an office right next door or very close to the land survival unit?

A. Right.

Q. And as I recall, you said someone in the unit communicated the fact that there was a man there who wanted to discuss something in your line?

A. Right.

Q. And you went into the hall and into the next room and there is where you first laid eyes on Mr. Opper?

A. That is right.

Q. And you started to discuss this glycol dispenser?

A. That is right.

Q. That is to kill germs in the air?

A. That is right.

Q. It vaporizes. How long did you talk with Mr. Opper then?

A. Ten or fifteen minutes.

Q. And you understood from that what it was and you made some comment about its unsuitability, did you not?

A. That is right.

Q. Found out up in an airplane, changing pressures, it wouldn't work?

A. It was not adaptable to aircraft.

Q. When the conversation closed on that note, did you leave his presence then?

A. I did. I went back to my office.

Q. Now I recall your stating, Mr. Holton, that Mr. Hollifield at a time when he was your unit chief, gave you a pair of goggles, asked you to take them over to aviation lab. to Mr. Strand?

A. That is right.

Q. We were speaking a little while ago of how the Aero Med. Lab. is first divided into branches, and you were in the Medical Specialities Branch, in the land survival unit of that branch.

A. That is right.

Q. Where was the aviation lab., in that branch?

A. No. It was a branch. Aviation unit is a unit of the Physiology branch.

Q. We have the top Aero Med. Lab. We drop down to branches. We have the Medical Specialities branch in which you were a part.

A. Right.

Q. And on the same level we have the Physiology branch and of the physiology branch there is a unit called the Aviation Lab.?

A. Right. Aviation Unit.

Q. Unit, I should say. Corresponding to your unit but in a different branch. Who composed the Aviation Unit of the Physiology Branch?

A. Captain Strand.

Q. Was he an optometrist?

A. I don't know.

Q. Physicist of some kind, scientist?

A. Possibly so.

Q. Physically, how far was Captain Strand located from your unit at the Field?

A. There was one building separating his building and mine.

Q. And could you go from one to the other and stay indoors?

A. Could not; had to go out.

Q. About how many feet away was his office from your office, approximately?

A. Oh, four or five hundred feet.

Q. Now we have a good mental picture, a recollection of the occasion when Mr. Hollifield asked you to take these goggles over to Mr. Strand. You remember that clearly.

A. Yes, I do.

Q. It occurred very shortly after you were transferred to his unit?

A. Right.

Q. It would have been very close to the last week in October or first week in November, close upon this, possibly a matter of days?

A. That is right.

Q. Was it in the morning, do you recall, or what time of day?

A. I can't recall that.

Q. Would you tell us more fully all that you remember about that? Did he call you over to the desk and talk with you a while about it?

A. He gave me the goggles in the unit, in the office room and asked me if I would take them over to Mr. Strand and have him check them, and I took them, took them across to building 29, to the Aviation Unit, and asked Captain Strand if he would check the goggles and he checked them.

Q. As you recall, that was the very word used, to "check" them?

A. Check them.

Q. He told you to have them checked by Civilian Strand. He is now a captain?

A. That is right.

Q. You were given them to have them checked and you took them to Mr. Strand and asked him to please check them.

A. That is right.

Q. You think that is all you were told?

A. That is all I told him.

Q. Did you, yourself, have any familiarity with the

goggles that were required for inclusion in either the E-1 or D-1 kit, at that time?

A. Only from having used them. Technically had no knowledge of them.

Q. In what sense were you familiar with them? How had you used them?

A. In the service I had used them.

Q. You mean in the field, in the service?

A. Yes.

Q. On foreign shores, in Alaska?

A. In Alaska and other places.

Q. Did you use more than one kind of goggle in Alaska? Did you use both the ski and sun goggle in Alaska?

A. I had no official handling of them. It was just I had used them in my capacity as an officer in the Air Force.

Q. Personally?

A. Personally.

Q. Had you used both kinds, sun and ski?

A. Yes, I had.

Q. So you were familiar with both kinds.

A. That is right.

Q. Which kind was it that Mr. Hollifield handed to you and asked you to take it to Mr. Strand and have it checked early in November or late in October?

A. The ski, mountain goggle.

Q. Now, in appearance, how does that differ from the sun glass, to the naked eye?

A. Ski, mountain is a glass goggle and the sun glass, sun goggle is a plastic, folding.

Q. You say the sun is a plastic folding. The ski doesn't fold?

A. It is hinged at the ends.

Q. To that extent it will fold, on the hinge?

A. That is right.

Q. Does the ski goggle normally come with a case in which it could be folded in place and buttoned down?

A. That is right.

Q. Is that true also of the sun?

A. No.

Q. There is no case with the plastic sun glasses?

A. No.

Q. Since you have mentioned that the ski goggle is glass and the sun goggle is plastic, isn't it a fact that the ski goggle, in its case that holds it, that there is a little slot and that there is an extra or auxiliary pair of plastic lenses with the ski goggle?

A. That is true.

Q. Now were you familiar at that time with any of the different types of ski goggle, or different types of sun goggle?

A. I was not.

Q. You had used both. Actually as a person you had made use of both kinds. When I say "kind" I mean sun and ski. You used both kinds in Alaska, but didn't know each kind was composed of different types.

A. That is right.

Q. And you had used them a considerable period of time up there?

A. Not a considerable period of time; just a day or so total time.

Q. Did you use them for physical comfort in order—for the purpose for which they were intended, to shield your eyes?

A. That is right.

Q. Did you find them satisfactory?

A. I did.

Q. To come back then to that trip. Did you wait, Mr. Holton, there at Mr. Strand's office?

A. I did.

Q. And did he do his checking or whatever he did, did he do that in your presence?

A. He did.

Q. This whole thing took about half an hour?

A. That is right.

Q. That is, for you to take the goggles from Mr. Holli-

field, walked 400 feet to give them to Mr. Strand, to wait for Mr. Strand to get down, all of that took about half an hour?

A. That is right.

Q. How long a time elapsed when you handed them to Mr. Strand before you started back to Mr. Hollifield?

A. Not more than fifteen minutes.

Q. So, Mr. Strand in your presence spent about fifteen minutes checking the goggles?

A. Well, hardly a total of fifteen minutes. We talked in the interim.

Q. He would put aside his work while he conversed with you to some extent?

A. That is right.

Q. Will you tell the Court and jury what you observed Mr. Strand do with the goggles?

A. He took them into his hands, turned them over and looked at them and checked to see that the manufacturing technique was good, that they were not inferior in workmanship, cursory examination. He held them to his eyes and said: "I think they are all right."

Q. Did he look out the window with them?

A. He looked out the window with them and handed them back to me.

Q. He gave it a minute inspection with the naked eye?

A. I said "cursory".

Q. By cursory, he looked at all parts?

A. Well, as much as he could without disassembling them.

Q. He didn't undertake to use any instruments?

A. No.

Q. Did he refer to any specification or photographs or anything of that kind?

A. No, he didn't.

Q. In his conversation with you, did he make any comment on the goggle he was inspecting?

A. He says, "I can't see anything wrong with these." That is about all he said. He said: "I think they are all right."

Q. Did you then return with them to Mr. Hollifield and impart that information, that is to say, that Mr. Strand said he couldn't see anything wrong with them, that they seemed to him to be all right? Did you report that to Mr. Hollifield?

A. I did.

Q. That visit whereby you took the ski goggles to Mr. Strand, Mr. Hollifield requested you ask Mr. Strand to check them, learned they were all right, returned with the goggles to Mr. Hollifield, imparted that information that they were all right, that took place before November 22nd, wouldn't you say?

A. I would say it did.

Q. Now having reference to Government's Exhibit 44 in evidence, the instrument on which you identified Mr. Hollifield's signature and Mr. Briggs', Colonel Blount and Mr. Carlson, that was prepared on the 22nd of November, after you had made the visit to Mr. Strand and reported back that these goggles were all right. Correct?

A. Correct.

Q. And the substance of what this document says being from Mr. Hollifield's unit, Carlson, Hollifield, Briggs, Blount, back to Mitchell, Mr. Mitchell, Lieutenant,—he was in the contracting section, wasn't he?

A. That is right.

Q. And the substance of this is following that test that "This laboratory has carefully examined the items submitted by the contractor." That was Cappel-MacDonald, wasn't it?

A. It says so here.

Q. —"and the samples appear suitable for inclusion in the Type E-1 kit."

A. That is right.

Q. In all of the time that you discussed anything in relation to this goggle with Mr. Hollifield, including the time you went on this errand for him and came back with them, did you observe or sense any impropriety in what he did at all?

A. Nothing.

Q. Did it appear to you to be usual and proper and customary in the function of his duty?

A. It did.

Q. And the same as to Captain Strand?

A. It did.

Q. Mr. Holton, do you plan to continue to be in this vicinity for the next several days?

A. I do.

Q. Next week or two?

A. I do.

Mr. Kelley: That is all.

Redirect Examination, by Mr. Aug.

Q. One question, Mr. Holton: When Hollifield turned these goggles over to you with the request that you go to Mr. Strand with the goggle, did he at that time say anything about a test to see if they met certain specifications?

A. He did not.

Mr. Aug: No further questions.

Mr. Kelley: None.

The Court: That is all. Now, Members of the Jury, we are about to recess the further hearing of this cause until tomorrow morning at 11 o'clock. During this interval bear in mind my usual admonition. Return here, if you please, at 11 o'clock tomorrow morning. Adjourn court until 11 o'clock tomorrow morning.

Thereupon the further proceedings in the trial of this cause were adjourned until tomorrow morning at 11 o'clock.

Testimony of Lieutenant Frederick Moss

Morning Session.

Thursday, May 22, 1952.

Court met pursuant to adjournment. The jury being present and counsel being present as heretofore noted, the trial of this cause proceeded as follows:

LIEUTENANT FREDERICK MOSS, being duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. Lieutenant, would you state your name?

A. Frederick Moss.

Q. You are with the Air Force, Lieutenant?

A. That is right.

Q. And your rank is lieutenant?

A. That is right.

Q. Where are you stationed?

A. WAAC, Aero Medical Laboratory, Wright-Patterson Air Force Base.

Q. How long have you been out there?

A. In the military since September and as a civilian since November 1950.

Q. What about the year? September what?

A. September 1951.

Q. And before that as a civilian?

A. Yes, from late November 1950.

Q. In the early part of January 1951 were you out at Wright Field?

A. Yes, sir.

Q. And in what capacity?

A. As a project engineer.

Q. In what particular branch or unit?

A. Physiology branch, Aviation unit.

Q. Who was your immediate superior?

A. Mr. Strand.

Q. Can you describe just briefly your duties?

Testimony of Lieutenant Frederick Moss

A. I am project engineer mainly on eye products equipment, sun glasses, goggles and special purpose goggles.

Q. In your formal education have you had any training that would qualify you for holding such a position?

A. Yes, sir. I am a graduate optometrist.

Q. Lieutenant, this is Plaintiff's Exhibit No. 26. It is a Routing and Record Sheet addressed to the attention of Mr. Strand. This sheet refers to some goggles and requests an inspection on the part of your office. I will ask you to take a look at that Routing and Record Sheet.

A. (Witness does as requested by counsel.)

Q. Now did the goggles referred to in that exhibit come into your possession?

A. Yes, sir, they did.

Q. Did you do anything with respect to the request made in that routing and record sheet?

A. Yes. I made out a work order to the materials lab., Physics Branch, asking them to test the goggles for conformance to the specification, with respect to its spectral photometric qualities.

Mr. Aug: Mark this for identification as Exhibit 45.

Thereupon an instrument was marked for identification as Plaintiff's Exhibit No. 45.

Q. Now, Lieutenant Moss, the date of the request to your unit to have the goggles tested, what is the date of that request?

A. 16 January 1951.

Q. I will hand you an instrument marked as Plaintiff's Exhibit No. 45 for identification, and ask you what the date is on the instrument?

A. 17 January 1951.

Q. Will you identify that exhibit?

A. Yes, sir.

Q. Will you describe what it is?

A. Well, it is a work order on which I request this Physics Branch of the Materials Lab. to perform the necessary tests on the goggle. My signature is at the bottom.

Mr. Aug: We would like to offer in evidence, if your Honor please, Plaintiff's Exhibit No. 45.

The Court: Very well.

Mr. Kelley: To which the defendant Opper objects upon the grounds there has been no sufficient predicate established for its introduction. It has not been tied up with the defendant Opper at this time.

The Court: It may be admitted in evidence, marked as Government's Exhibit 45.

Thereupon said work order was admitted into evidence and marked as Plaintiff's Exhibit No. 45.

Q. Now, Lieutenant Moss, did you have any response to this work order?

A. Yes I did.

Q. Whom did you talk to?

A. Mr. Handmaker.

Q. Who is he?

A. He was a project engineer in the Physics Branch of the Materials Lab. who does the spectral photometric work.

Q. Did he tell you the results of his test?

A. Yes, he did. He informed me the results of those tests and I took those results and answered this communication.

Q. Lieutenant Moss, I will hand you Government's Exhibit No. 27 marked for identification and ask you to take a look at it, please.

The Court: No. 27.

Mr. Aug: It is 27. It is not in evidence.

The Court: That is right. Marked for identification.

Mr. Aug: That is correct, your Honor.

A. This is the answer.

Q. Can you identify it, please?

A. Yes, sir.
Q. What is the date on it?
A. 23 January.
Q. What is the instrument itself?
A. This is a communication and answer to the one of 16 January in which we list the results of the test and say that the goggle should be rejected because it did not meet the specification.

The Court: Exhibit 27 is an answer to Exhibit 45; is that right?

Mr. Aug: No, your Honor. The witness has said it is in answer to Exhibit 26.

The Court: That is 27.

Mr. Aug: Is an answer to 26.

The Court: All right.

Q. Is that your signature on this exhibit?
A. Yes, sir.
Q. You are familiar with the signature of Mr. Hein?
A. Yes, sir.
Q. Is that his signature?
A. Yes, sir.

Mr. Aug: We would like to offer in evidence Plaintiff's Exhibit No. 27.

Mr. Kelley: To which defendant Opper interposes the same objection last stated as to Exhibit 45.

The Court: Very well. Objection overruled. It is admitted in evidence, marked as Government's Exhibit No. 27 in evidence.

Thereupon said Routing and Record Sheet was admitted into evidence and marked as Plaintiff's Exhibit No. 27.

Mr. Aug: I would like to read to the jury Plaintiff's Exhibit No. 27. This is a Routing and Record Sheet. The subject: Goggles, Sun, Type 1, Specification MIL-G-4085.

From MCREXDS. To MCREXD-72. Dated January 23, 1951. Comment No. 2.

"1. As requested in paragraph 3, Comment 1, with subject goggles were tested to determine conformity with Specification MIL-G-4085, Goggles, Sun, Type 1.

"2. Tests of the daylight transmission of the lenses were accomplished. The right lens was found to have 28 per cent daylight transmission, and the left lens was found to have a daylight transmission of 26 per cent. Paragraph 3.4.4.1 of the specification stipulates 15 plus or minus 3 per cent for the daylight transmission of the subject lens.

"3. The color of the lenses, designated in terms of chromaticity coordinates, is a neutral shade. The tested lenses are green. The chromaticity coordinates determined for the tested lenses do not fall within the limits stated in the specification, par. 3.4.4.1.

"4. It is recommended that subject goggles be rejected because of the above listed, marked deviations from Specification MIL-G-4085, Goggles, Sun, Type 1.

(Signed) "J. W. HEIN

"Concurrence: F. MOSS."

Q. Now, Lieutenant, after your rejection of the goggle dated January 23, 1951, what next happened?

A. The next thing was Mr. Hollifield called me up and said that he wanted to talk about it and he had some gentleman to bring up to discuss the problem.

Q. What date was this?

A. It was I imagine the 23rd or 24th, or sometime around there, the 25th, very soon afterward.

The Court: What year?

The Witness: Oh, this is 1951, January.

Q. January 1951. Did you talk to Hollifield?

A. Yes, on the telephone.

Q. Did you talk to him personally?

A. Then he came up with three other gentlemen.

Q. This conversation took place where?

A. In our office.

Q. In your office?

A. That is right.

Q. Will you state who was present?

A. Mr. Hollifield, Mr. Murray and two other gentlemen.

Q. Hollifield, Murray and two other gentlemen?

A. And Mr. Strand.

Q. Do you know who any of the two other gentlemen were?

A. Yes, I do.

Q. Do you know a party by the name of William J. Opper?

A. Yes.

Q. Do you see Mr. Opper in this court room?

A. Yes, sir.

Q. Can you step down from the stand and place your hand on the man known to you as William Opper?

A. Yes, sir.

Q. Was he present at this conference?

A. Yes, sir. (Witness places hand on defendant Opper.)

Q. Now we have you, Hollifield, Murray. Did you say Strand?

A. That is right.

Q. And Opper present. Now was anybody else present?

A. There was another gentleman present.

Q. Do you know who that was?

A. No.

Q. You don't know. Now what transpired at this conference?

A. Well, Mr. Hollifield gave certain reasons for possible deviation. In other words, to allow these goggles, as such, to be accepted by the Air Force and we discussed them at length, and, well, we came to the conclusion that Mr. Hollifield should write his—give his reasons in a routing and record sheet and we would answer it.

Q. Did he do that?

A. Yes, he did.

Q. I will hand you Government's Exhibit 28-A and ask you to read the contents of that exhibit?

A. "Subject: Goggles, Sun, Type 1. Specification MIL-G-4085."

Q. Have you finished reading it?

A. Yes.

Q. After having read this, is that substantially a statement of the reasons advanced by Mr. Hollifield as to why your rejection should be changed?

A. Yes, it is.

Mr. Aug: I would like to read Plaintiff's Exhibit 28-A to the jury: Subject is Goggles, Sun, Type, Specification MIL-G-4085. Dated January 25, 1951. Comment No. 2. From MCREXD-7 to MCREXD-8.

Q. Before I go further, Lieutenant, you have just heard me read those symbols ending with -7 and -8. Are you familiar with that -7?

A. Yes.

Q. What does -7 mean?

A. -7 was Medical Specialties Branch.

Q. MCREXD?

A. That was the Medical Specialties Branch.

Q. Who was head of that branch?

A. Major Briggs.

Q. MCREXD-8?

A. That is the Physiology Branch. That is our branch. Mr. Heim was head of that.

Mr. Aug: (Reads)

"1. Confirming conversation between Messrs. F. Moss and O. Strand of your Branch and Messrs. R. Hollifield and N. Murray of Medical Specialties Branch, it would be appreciated if your office would reconsider the use of the goggles submitted to determine their conformity with subject item, in view of the following information.

"2. It is pointed out that the item submitted, although not in accordance with the current specification, is for packaging in an aircraft type survival kit. This kit is stowed on multiplace aircraft and the contents are used only in an actual survival circumstance. Further, the percentage of survival kits ever put to arctic usage is very small.

"3. Items in exact accordance with the sample goggle submitted by this office have been furnished as GFE on 15,000 D-1 kits which the Government has packaged. It is also considered that, inasmuch as these goggles are available, and to obtain the goggle per current specification would require their manufacture and an excess length of time, the production of E-1 kits can be expedited. The contractor has also advised that the cost of the goggle per subject specification is $3.30 each, while the cost of the substitute item is $.75 each. This would mean a saving to the Government of $38,250.00.

"4. Your comments are requested.

(Signed) "RANDALL W. BRIGGS.

"Concurrence: NORRIS N. MURRAY."

Initials in the righthand corner "RGH/bgs"

Q. Did this communication reach you?

A. Yes, sir.

Q. Did you take any action on this communication, after it reached you?

A. Yes. We answered it.

Q. You answered it?

A. That is right.

Q. I will call your attention to Plaintiff's Exhibit 28-B, which has been marked for identification, and ask you to take a look at that.

A. (Witness does as requested by counsel.)

Q. Will you identify it, please?

A. Yes. This is—

Q. Can you state what it is?

A. This is an answer to comment 3, which gave the reasons which you just read.

The Court: That is on 28-A.

Mr. Aug: Yes, your Honor.

Q. Are you familiar with the signature of Mr. Heim?

A. Yes, sir.

Q. Are you familiar with the signature of Mr. Strand?

A. Yes, sir.

Q. Are you familiar with the signature of Colonel Blount?

A. Yes, sir.

Q. Can you recognize those signatures?

A. The first two I recognize.

Q. You recognize Mr. Heim and Mr. Strand?

A. Yes, sir.

Mr. Aug: We would like to offer in evidence, if the Court please, Plaintiff's Exhibit 28-B, previously marked for identification.

Mr. Kelley: I object to that upon the grounds at this time there has been an insufficient predicate laid to establish the relevancy and materiality as to the defendant Opper.

The Court: I understand these inquiries came and the answers came after you had a conference at which Mr. Opper was present?

The Witness: The last two, that is right.

The Court: Yes. That is right. I will overrule the objection. It may be admitted in evidence. I understood from counsel yesterday that what was marked as 28-B for identification had something to do with a wholly different matter. That is why we had it marked for identification. I think the record will so show.

Mr. Kelley: What we said was, there had been no identification. It is only this morning that this witness has undertaken to identify the signatures on 28-B.

Mr. Aug: 28-B is in evidence, is that correct?

The Court: Yes. Now that whole document marked 28-A and 28-B, the whole document now is admitted in evidence and marked as Government's Exhibit 28-A and 28-B in evidence, although it is all on one piece of paper.

Thereupon said reply to Comment No. 3, Plaintiff's Exhibit No. 28-A, was admitted into evidence and marked as Plaintiff's Exhibit No. 28-B.

Mr. Aug: I would like to read to the jury the contents of Plaintiff's Exhibit 28-B. (Reads) Comment 4. It is dated 3 February 1951. From MCREXD8 to MCREXD7.

"1. Comment No. 2 dated 23 January 1951 from this office states that tests made by the Vision Unit show the sample goggles submitted under Specification MIL-G-4085 (Type 1) to be not acceptable.

"2. The neutral lens described by the subject specification is considered by this office to be the best available for the purpose intended; however, in view of the exigencies of the present situation as outlined in Comment No. 3 dated 25 January 1951 and the fact that to the best of our knowledge no Unsatisfactory Reports have been received on goggles of the type submitted for approval, it is recommended that the substitute goggle be procured.

(Signed) "J. W. HEIM

"Concurrence: O. T. STRAND

"R. W. BLOUNT."

Through with the witness, your Honor.

Cross-Examination, by Mr. Kelley.

Q. Lieutenant Moss, I direct your attention to Plaintiff's Exhibit 45 in evidence, which you have identified as a work

order issued by yourself. I will ask you to whom did you direct it?

A. Mr. Koch, who at that time was the branch chief, of the Physics Branch.

Q. And did you send anything physical, any attachment or enclosure physically along with the work order to Mr. Koch?

A. Yes.

Q. What?

A. A pair of goggles.

Q. What kind of goggles, sun or ski?

A. Sun.

Q. Sun only?

A. Yes, sir.

Q. Did you physically bring them to Mr. Koch yourself?

A. I think so. I can't exactly say whether I sent them down or hand carried the work order with the goggle.

Q. How far away was Mr. Koch's office physically from yours?

A. Three city blocks.

Q. Had you taken on other occasions some work orders accompanied by specimens to Mr. Koch, in other matters?

A. Probably, at that time. I have taken them since. I don't remember whether this is the first time or whether there were ones before this.

Q. Have you at sometimes carried the samples yourself and at other times sent them by messenger?

A. Yes, sir.

Q. And you are in doubt as to what you did in this particular case?

A. Yes, sir.

Q. If you will refer to Project Title, what does that say?

A. Goggles and Sun Glasses.

Q. Goggles and Sun Glasses. What did you mean by that, if you merely sent along sun glasses?

A. This is a form. It is the project title, the form of title of all the work that I do. On every work order you will find "Goggles and Sun Glasses".

Q. What does it mean, Goggles and Sun Glasses?

A. It means that is the title of the project.

Q. If you have "Goggles and Sun Glasses", does "Goggles" relate to something different than sun glasses?

The Court: Did they?

The Witness: My project, is that what you are referring to?

The Court: Is there any difference? Is there some distinction between Goggles and Sun Glasses?

The Witness: Yes, there is.

The Court: I mean in your report there.

Q. What is that distinction?

A. As I said, this is just a title, the title of the project. All my work is goggles and sun glasses.

Q. Now, I will ask you, since you have testified that in this case you either sent by messenger or personally brought to Mr. Koch sun glasses only—How many pair?

A. One or two, I am not sure.

Q. From whence and from whom and when and where did you obtain that one or two pairs of sun glasses?

A. I got them with the R and R that was read before, requesting a test.

Q. By that you are referring to Government's Exhibit 26; is that right?

A. That is right.

Q. Did you get that by messenger or did somebody bring Exhibit 26 along, plus the one or two pair of sun glasses and hand them to you?

A. I don't remember.

Q. In connection with this subject, that is to say, the sun glasses which you were asked to test by Exhibit 26, before receiving Exhibit 26 along with the one or two pair of sun glasses, had you discussed this matter with anyone in the land survival unit?

A. Before—

Q. Before you received Exhibit 26.

A. I might have. This happens often: Sometimes I would get a telephone call and say, "I have some goggles to test" and normally they have to come over with the goggles, and sometimes it is a telephone conversation and sometimes a person comes up and hands them to me.

Q. You say "might". I am asking you, do you recall having discussed the matter with anybody in the land survival unit before you received this R and R, dated 16 January, which is Plaintiff's Exhibit 26?

A. No, sir.

Q. Do you remember breaking, physically breaking a lens of a sun glass?

A. It was of a ski goggle.

Q. Ski goggle?

A. That is right.

Q. Did that breaking of a ski goggle take place in your office or in the land survival unit office?

A. Land survival unit office.

Q. And did that take place before the date of this R and R, Plaintiff's Exhibit 26?

A. No, sir.

Q. It took place after?

A. Yes, sir.

Q. So, am I correct in understanding that in addition to the sun glasses which were delivered to you, either personally by someone, or by messenger, along with Plaintiff's Exhibit 26, at some other time the land survival unit also delivered to you certain ski goggles for some tests?

A. Right.

Q. Did the delivery and request for tests of ski goggles come prior to or after the delivery and request for tests on sun glasses, requested by Exhibit 26?

A. It came afterward.

Q. About when?

A. Couple of weeks afterwards, some time like that.

Q. And did you ultimately submit those ski glasses to the Materials Lab. for similar technical tests?

A. Yes, sir.

Q. And receive back their report?

A. Yes, sir.

Q. And report in writing back to the land survival unit the results of the tests on the ski goggles?

A. Yes, sir.

Q. Now, when you received the ski goggles from land survival for test, did some written R and R accompany the samples then requesting a test?

A. I don't remember.

Q. Might it have been an oral thing, as well as R and R?

A. Yes, sir.

Q. Did you ever in your Lab. or elsewhere participate in a conference with Mr. Hollifield and/or Mr. Opper, and or with any other persons in relation to your testing of the ski goggle?

Mr. Aug: Your honor, we will object to the interrogation of this witness with respect to the ski goggle, because our direct examination of this witness has gone only to the testing of the other goggle.

The Court: I will sustain the objection. You may call him later on, if you wish.

Mr. Kelley: I am undertaking in cross-examination, your Honor, to determine whether or not this witness may not be confused as to the subject matter of a conference at which he was present when Mr. Opper was.

The Court: He probably will be, if we keep on. I will sustain the objection.

Mr. Kelley: May I state in the record my purpose?

The Court: I sustain the objection, Mr. Kelley. You may have your exceptions.

Q. Did you ever attend any conference, at any time or any place, with Mr. Opper present, other than the one as to which you testified to on direct examination?

A. Not to my knowledge.

Q. Could you say positively you did not?

A. Fairly sure; positively I did not.

Q. Now you say there was present at that conference on behalf of your Lab., that is the Vision Lab., of the Physiology Branch, yourself, and your immediate superior Mr. Strand. Anyone else from that branch or lab. at this conference?

A. They might have dropped in. They might have passed through. The door was always open. But not taking part in the conference as such.

Q. By "they" whom do you refer to?

A. Colonel Carlson or Dr. Heim himself.

Q. You are satisfield they did not remain and participate in the conference?

A. That is right.

Q. You say in addition to yourself and Mr. Strand there was Mr. Hollifield. Then you mentioned Mr. Murray. He was then a civilian. Mr. Murray is now in the Armed Forces.

A. That is right.

Q. What is his full name?

A. Norris Murray.

Q. What was his connection with the subject matter discussed, that is, the sun glasses to be used or submitted for use in the D-1 kit? What was Mr. Murray's connection with that project?

A. Actually at the time I didn't exactly know what his connection was. He didn't say much. I didn't know exactly what his connection was.

Q. You have learned since he was the project engineer in the D-1 kit?

A. Yes, sir.

Q. Mr. Hollifield was the project engineer on the E-1 kit, wasn't he?

A. I don't know.

Q. But you do know it was Mr. Murray who was project engineer on the D-1 kit which involved the sun glasses which was the subject of your conference?

A. Yes.

Q. What time of day did you commence that conference?

A. That was, I think it was in the morning.

Q. You think?

A. Yes.

Q. Might it have been in the afternoon?

A. Might have, but if I had to say, I would say it was in the morning.

Q. But you aren't sure?

A. No.

Q. You say a telephone call preceded their actual arrival at your office?

A. Yes, sir.

Q. And you were one party to that 'phone call?

A. Yes, sir.

Q. Can you swear under oath who the other party was, whether Mr. Hollifield or Murray?

A. Yes. I would say it was Mr. Hollifield.

Q. Had you been acquainted with Mr. Hollifield prior to that time?

A. Been introduced to him probably.

Q. That only?

A. I think that was the first actual lab. connection, I mean had to do with work.

Q. You had had no official transaction with him at all prior to that meeting in your office?

A. Well, as I say, he might have brought the goggles up originally.

Q. That is pure speculation, isn't it?

A. That is right. I am not sure.

Q. Had you had any official transaction with him at all prior to his telephoning you and meeting afterward, coming over to your lab. for a conference?

A. As far as I can remember, I couldn't answer; I couldn't say.

Q. How about Mr. Murray, had you had any official transaction with Mr. Murray prior to receiving a call from Mr. Hollifield, followed by their coming to your lab.?

A. You mean speaking to him or in a communication?

Q. Lieutenant, I said an official transaction.

A. Oh, we got one. The goggles came to us on an R and R. That was an official transaction.

Q. Had you any official transaction with Mr. Murray prior to this conference wherein you and he were physically together and discussed such a transaction?

A. Not to my knowledge.

Q. Had you ever seen Mr. William J. Opper before, as you say, he entered your office on the occasion of this conference concerning sun glasses?

A. Not to my knowledge.

Q. You say there was another gentleman who came along. Who was he?

A. I can't remember.

Q. Let's call him Mr. X. Describe Mr. X physically?

A. My impression of him was that he was sort of a small, slight man, blondish gray hair.

Q. You have been interrogated since the date of that conference by Special Agents of the F. B. I., have you not?

A. Yes, sir.

Q. On occasion those agents have brought you together with divers individuals and asked you whether or not you could identify such individuals as Mr. X, have they not?

A. Yes, sir.

Q. Who have they pointed out to you and asked you whether or not it was Mr. X?

A. Only one person.

Q. Who was that?

A. Mr. Buchsbaum.

Q. What did you say?

A. I said, no, to my knowledge it was not.

Q. Now tell this Court and jury all that you observed concerning the physical appearance of Mr. X?

A. I imagine if I saw him I might remember him. I am not even sure of that. But to go any further with a description would be just speculation.

Q. Any further? What have you said up to now?

A. As I said, he seemed to be—I remember he seemed to be light complected. That is about as far as I could go with it.

Q. About how tall was he?

A. Medium height. He wasn't outstanding to my mind or I probably would remember those things.

Q. What do you mean by medium height?

A. My height.

Q. How high are you?

A. Five, ten, probably.

Q. What would you judge his weight to have been?

A. Medium weight.

Q. Color of his hair?

A. As I said, he was sort of blond or gray. It was light, I judge.

Q. What do you call medium weight?

A. 160, 170.

Q. What would you judge his age to be from what you observed?

A. Middle age.

Q. What do you mean by middle age?

A. Between 35, 48, 50.

Q. Do you recall anything as to the wearing apparel he had on that day?

A. Nothing striking.

Q. Do you recall anything that Mr. X said during that conference?

A. No.

Q. Can you state anything Mr. Opper said during that conference?

A. No.

Q. Mr. Murray engaged in the discussion, did he not, as to why these goggles should be considered suitable for the kit, during that conference?

A. Might have said something. I can't remember exactly what he said. He didn't speak too much.

Q. He did participate, however, did he not?

A. Must have said a few things; everybody participated.

Q. Everybody did?
A. Yes.
Q. You mean yourself?
A. Yes.
Q. And Mr. Strand?
A. That is right.
Q. And Mr. Murray?
A. That is right.
Q. And Mr. Hollifield?
A. That is right.
Q. How long did that conference last, Lieutenant?
A. An hour or so.
Q. You mean by "so," an hour or slightly longer?
A. Yes, sir, that is right.
Q. Satisfield at any rate it was at least an hour?
A. That is right.
Q. You discussed this matter with your immediate superior, Mr. Strand, in the last several days?
A. The last several days?
Q. Yes.
A. What do you mean by "several days"?
Q. The last week?
A. Slightly. I mean not the conference particularly.
Q. Have you discussed with him anything concerning what occurred or who was present or what might have been said at that conference, in the last week?
A. Maybe. I am not sure if it was in the last week.
Q. Do you remember my interviewing you in a room across the hall? Since the time that I interviewed you, about how long was that?
A. That you interviewed me?
Q. Yes, across the hall.
A. About ten days ago, I guess.
Q. Within the last ten days have you discussed anything whatsoever concerning what occurred or may have been said at that conference with Mr. Strand?
A. Maybe we mentioned—it wasn't any long discussion. Probably mentioned it.

Q. Did you mention something about what may have happened or have been said by any one at that conference?

A. I don't believe we did.

Q. Did Mr. Strand inform you that I had also interviewed him in that room?

A. Yes, sir.

Q. Describe Mr. Murray who was present at that conference.

A. Tall, heavy-set gentleman.

Q. What would you judge his height to be?

A. About six, one.

Q. His weight?

A. 210, 220.

Q. Age?

A. 40.

Q. He was present during all of this conference, when you say Mr. X was there and Mr. Opper was also there?

A. That is right.

Q. Where is Mr. Murray today, if you know?

A. I understand he is in Germany.

Q. Where did you last see Mr. Murray?

A. Sometime this past winter.

Q. If Mr. Opper and Mr. X were there at the conference, Mr. Murray of necessity would have had to observe their presence, because he was there at all times; is that right? Can you fix the month when you saw him?

A. I would say about three months ago.

Q. Did he inform you he had been brought back to be interrogated in connection with the facts of this case?

A. Not as far as I know. .

Q. He had been in Germany theretofore?

A. I don't know.

Q. Now tell us everything that you can remember that Mr. Hollifield said at that conference?

A. Oh, as far as I remember, he gave the reasons for —gave his reasons that he thought we should grant a deviation and we discussed them. That was it. The reasons are in the R and R.

Q. I believe in direct examination, counsel for the government asked you concerning the work order that you sent over. Then he asked you if you received some communication back from Mr. Koch as to the results of his test.

A. Yes.

Q. I don't believe you were asked as to whether that information received back from Mr. Koch was oral or written. What was it?

A. What is the date? The first time I got a communication, it was oral. I got it over the telephone. I wrote down the figures.

Q. You sent the work order on the 17th?

A. That is right.

Q. Of January 1951. Now when was it you say you received some oral response from Mr. Koch?

A. Oh, either the 17th, 18th, 19th; sometime around there.

Q. And then you say you later received a written response?

A. That is right, a lab. report.

Q. Substantially to the same effect as the oral report?

A. Yes.

Q. Do you know where that written report is?

A. Right now?

Q. Yes.

A. Probably in my file folder.

Q. In your file folder?

Mr. Kelley: May I ask if the government has it?

Mr. Aug: Yes, sir, we do.

Mr. Kelley: Would you please produce it?

Mr. Aug: We certainly will. (Produces.)

Q. When Mr. Koch called you on the 'phone and orally told you the results of this test, what did he say?

A. Mr. Koch didn't call me.

Q. Who did?

A. Mr. Handmaker.

Q. What did Mr. Handmaker say?

A. He said the goggles don't meet the specifications and I said: "What are the figures?" and he gave me the figures.

Q. Figures about what?

A. Transmittance.

Q. Did you write them down?

A. Yes, sir.

Q. Have you any idea how long after that it was when the written report from Mr. Handmaker finally came through to you?

A. I know it is dated March 15th, the written report.

Q. You already had had an oral report from Mr. Handmaker, at the time you sat down in conference with Mr. Hollifield and Murray?

A. Yes, sir.

Q. Mr. Handmaker didn't consider their goggles suitable because of their light absorbing properties?

A. That is right.

Q. You didn't invite him to the conference?

A. No.

Q. It was your authority to pass for approval or not approve?

A. That is right.

Q. Mr. Handmaker was purely advisory to you?

A. He was doing the service.

Q. It was up to you whether they were suitable, you and your superior, Mr. Strand?

A. Well, yes, acceptable for the kit. In other words, we would say whether they met the specification. And there were other parts of the goggle we would be interested in, such as distortion and thickness, some facts given to us by Handmaker, and some we get ourselves, and we would say, "This doesn't meet the specifications for the following reasons." We evaluated the—

Q. You knew that the whole matter of inquiry was with respect to the suitability of this goggle for inclusion in the D-1 kit, didn't you?

A. That is right.

Q. You knew that the effect of your decision as to whether they were reasonably within the spec. or sufficiently close to the spec., was to determine their suitability for inclusion in the kit?

A. That is right.

Q. Many applications were made by contractors for some deviation in specification?

A. That is right.

Q. In the same way you would consider the price and cost?

A. That is right.

Q. And upon the price would make your determination as to whether they were suitable or close enough to the spec. to be suitable in the kit?

A. That is right.

Mr. Kelley: Would you please mark that as Defendant's Exhibit F for identification?

Thereupon a test report was marked for identification as Defendants' Exhibit F.

Q. I show you what has been marked for identification as Defendants' Exhibit F and ask whether you can identify it. Yes or no.

A. Yes.

Q. What is it?

A. That is the materials lab. test report, giving a report on the goggles that were tested.

Q. That is the written response to your work order which you sent down to Mr. Koch, and this response is prepared by Mr. Handmacher?

A. That is right.

Q. And what is its date?

A. 15 March 1951.

Q. However, before you ever received that, you and Mr. Strand, now Lieutenant Strand, had already reached a decision in the matter, had you not?

A. That is right.

Q. The decision being reflected in your R and R, Comment 4, which is Government's Exhibit 28-B. So, you reached your decision, acted upon it, communicated that decision back to the land survival unit before you ever did, or before the written report from Handmacher ever caught up with you?

A. Yes, sir.

Q. As far as you know, if you received and in turn transmitted to Mr. Koch two pairs of sun glasses, were they identical, as far as you could observe?

A. Probably.

Q. You are forced to speculate first as to whether there was one or two?

A. That is right.

Q. And you say if there were two, they were probably alike. Would you suggest any reason why you should send more than one?

A. No, I couldn't. Probably sent one. I can't think of any reason I would.

Q. Would you describe for the Court and jury what that pair of sun glasses looked to you?

A. Leather frame, folding goggles, with some perforations on the top, and there were glass set shields and plastic set shields, and plastic lenses. The lenses are set into the leather and there is an elastic head band that attached to the goggles.

Q. You had in your possession and used as a guide certain written specifications with respect to that sun goggle, did you not?

A. Yes.

Q. Do you recall the identity of that particular specification?

A. The number?

Q. Yes.

A. MIL-G-4085.

Q. And it was with reference to that specification that after having received an oral report from Mr. Handmacher that you reported back that the goggles submitted

to you did not fully meet the specification which you just recited?

A. That is right.

Q. Was there anything in the specification concerning color?

A. It says the color should be neutral.

Q. What does neutral color mean to you?

A. It is a gray, probably best described—In other words, we take a piece of plain glass and keep making it darker and darker.

Q. With pigment of some kind?

A. Yes.

Q. So there is some color?

A. Well, gray isn't a color.

Q. What do you use to get gray into a glass?

A. Black.

Q. So it is some mixture of black and that is not a color, is it?

A. No, black is not a color.

Q. Are you prepared to say that no color in any form was impregnated into the sun glass?

A. No, I am not.

Q. By that do you mean that there might have been, as far as you know?

A. Well, we use a chromoticity system which defines the limits. We say absolutely no color is a certain point, but there were certain manufacturing difficulties. So we draw a circle around that. We say anywhere within that point is gray and that is our neutral.

Q. If a most accurate laboratory analysis were to demonstrate that some colored pigment was in the goggle, it would not remove it from the spec.?

A. We do not measure pigment.

Q. If some degree of color were present in the glass submitted, it would not for that reason then be without the specification?

A. As long as it falls witnin the circle.

Q. Within this tolerance?

A. That is right.

Q. Is the chromoticity in any sense synonymous with color?

A. That is right.

Q. Chromo means color?

A. Chromo.

Q. Was the color of this goggle or chromoticity a matter or subject of discussion at that conference?

A. Oh, yes.

Q. It was one of the principal ones, wasn't it?

A. That is right.

Q. What did you have to say about that aspect of the matter?

A. Well, I thought that neutral was the best since you don't get any color distortion when you look through a neutral lens. We thought about possible survival situations where you might be in a—everything would look green in a jungle and you would have a problem. It might be better to have the neutral. It was discussed; it was thought about and talked about.

Q. The question would depend much on how green.

A. Actually we just considered it green. I don't think we considered how green it was.

Q. You knew what kit this goggle was to be a component part of?

A. It was probably explained at the time.

Q. The D-1 kit. Was it explained to you it was to be used in arctic and very cold regions?

A. Probably so. I can't remember that part of it. I imagine it would have come up, if we discussed this goggle.

Q. Tell this Court and jury everything you do remember that anybody said at that conference?

A. Exact words I couldn't tell you.

Q. Give us the substance. Tell us everything you remember.

A. The reasons were presented to us as outlined in the R and R.

Q. By whom? Who is doing the speaking?

A. Mr. Hollifield presented these reasons.

Q. Exclusively Mr. Hollifield?

A. I would say practically exclusively.

Q. What do you mean by "practically exclusively"?

A. Somebody else might have said something.

Q. You want it to be your testimony that Mr. Murray only might have said something. Don't you know he did?

A. No.

Q. You suggest he may have been speechless for more than an hour?

A. No. He said a few things. It is my impression of the conference Mr. Hollifield did most of the talking.

Q. I didn't ask you for your impression. I asked for your memory. Can you state now that you can't remember anything that Mr. Murray said?

A. Specific?

Q. Yes.

A. Yes, I can state that. I can't now remember anything he said.

Q. Can you remember anything specific that you said?

A. I can, not specific, not word for word.

Q. Or in substance?

A. In substance, yes.

Q. What can you remember in substance that Mr. Murray said?

The Court: What did you say in substance? Go ahead.

A. This was about the green in the neutral. We discussed that it was my impression it should be considered that the—we are using green lenses. The person might be at a disadvantage due to the color distortion.

Q. In what part—

The Court: Finish what you said in substance.

The Witness: And then maybe Mr.—probably Mr. Strand discussed that and said maybe. Then the problem of what type of kit it was might have come up.

The Court: They want to know what you said in substance. Is that all you recall that you said in substance?

The Witness: Yes. That is all I recall in substance.

Mr. Kelley: Your Honor finished?

The Court: Yes. I only want the witness to answer the questions. You asked him what he said in substance.

Mr. Kelley: I would have come to it.

The Court: I think the time to come to it is now while we are on the subject.

Q. Witness, have you told us everything that you can recall that you said in substance at that conference?

Mr. Aug: He said he had.

Mr. Kelley: That is his Honor's examination. I will conduct mine.

A. Yes, sir.

Q. And your observations or remarks on that occasion were as to the color green?

A. Probably said something about transmission, too. I don't remember in substance what I said.

Q. When you made some observation about the color green maybe affecting the clarity of what the wearer might see, were you envisioning its use in the tropics or in the arctic?

A. At the time I don't remember what I was envisioning.

Q. You must have envisioned something.

A. In all climates, all areas, probably.

Q. You have no recollection that you mentioned anything about the arctic?

A. No specific recollection.

Q. Are you an optometrist?

A. Yes.

Q. Is Mr. Strand?

A. No. He is a physicist.

Q. Are you the only optometrist in the Vision Lab.?

A. Not now.

Q. Were you the only optometrist there then?

A. Yes, sir.

Q. Did you ever make a statement to a special agent of the FBI, while being interrogated about this matter, that you, being an optometrist would, yourself, personally rather use the goggle that Opper supplied in extremely cold conditions?

A. Yes.

Q. You made that statement?

A. Just a second. What goggle you talking about?

Q. I asked you whether at any time you ever made a statement—

Mr. Kelley: Can you read it? We will have it read for you.

(Thereupon the last Q. at the bottom of p. 503 and top of p. 504 was read by the reporter.)

A. I don't understand that. I don't see—I don't know exactly what goggle you are talking about.

Q. I don't care what goggle we are talking about. Did you ever make a statement to an agent of the FBI to the effect and in substance that you would rather personally use the goggle that Opper supplied in extremely cold conditions? You can answer that whether you did or not.

A. Not that I can remember at all.

Q. You did have conversations with FBI agents concerning that conference, didn't you?

A. Yes.

Q. They asked you what you said, didn't they?

A. That is specifically, is that? I just gave them a general idea.

Q. You would say then you didn't make such a statement?

A. I don't remember. I might have. I can't understand why I would say it.

Q. I will restate the question. Did you at any time

make a statement to an FBI agent that you would personally rather use the goggle that Opper supplied in extremely cold conditions?

A. No explanation?

Q. That is all.

A. I can't remember.

Q. Would you say you didn't ever make such a statement?

A. No, I wouldn't say that. I don't remember.

Q. You might have?

A. I might have.

Mr. Kelley: Your Honor, may we have a five-minute recess? I have to guard my voice a little bit from hoarseness.

The Court: Recess for about five minutes.

Thereupon a short recess was had.

The Court: Counsel may proceed.

Q. You were a project engineer in the Aviation Laboratory?

A. Vision unit.

Q. Vision unit of the Physiology branch. As such were you not required to keep a project file?

A. That is right.

Q. And that was kept personally by you?

A. Yes.

Q. It represented the accumulation of all progress on that project insofar as you had anything to do with it?

A. Yes.

Q. Where is that project file that relates to this matter, which I think you said was described as Goggles and Sun Glasses? That was your project, wasn't it?

A. That is right.

Q. Where is that file?

A. File is at the lab.

Q. Now, wasn't it your custom whenever anything developed in connection with your project, Goggles and Sun

Glasses, to make notes to retain in that project file, which would show what had been accomplished?

A. It should have been, but we were kind of careless about these project file folders at that time. We have since been more diligent.

Q. Since when?

A. Since the director came out last year.

Q. Didn't you keep any notes up to the time of this conference?

A. Absolute notes?

Q. Yes.

A. No. I was new at the time.

Q. How new were you at the time of that conference?

A. I was there from November 28th. I was there about a month or so, month and a half, two months.

Q. Incidentally, how close can you fix the exact date of the conference?

A. Within a week to ten days after the original communication, after we got the goggle, around the 23rd, 24th, 22nd.

Q. You had an opportunity outside of this court room to examine all of these exhibits, have you not, Government's Exhibits 27, 25, 26, 28-A and 28-B? You have examined those several times in the recent weeks, have you not?

A. Yes, sir.

Q. Isn't there anything in those documents that serves to refresh your recollection as to the exact date of this conference?

A. Well, this R and R was written on the 25th.

Q. You were referring to Government's Exhibit 28-A and 28-B. Is there anything on that that serves now to refresh your recollection, as to the exact date when this conference was held in your office?

A. It still wouldn't, couldn't give you the exact date. I would say within two days. I say the 22nd, 23rd, 24th, 25th.

Q. This instrument, Government's Exhibit 28-A is dated 25 January 1951.

A. Yes.

Q. And at least that serves to refresh you that the conference was before or after that date?

A. The conference was before that date.

Q. Why do you say that. Is there something there?

A. "Confirming conversation between."

Q. The very first sentence here: "1. Confirming conversation between Messrs. F. Moss and O. Strand of your branch, and Messrs. R. Hollifield and N. Murray of Medical Specialties Branch, it would be appreciated" and so forth. Is that the conversation mentioned here—Was that the conference as to which you have been testifying?

A. Yes, sir.

Q. And it states as I just read—mentioned: Mr. Moss, Mr. Strand of your branch, Mr. Hollifield and Mr. Murray of the Medical Specialties Branch?

A. Yes, sir.

Q. Doesn't mention Mr. Opper or Mr. X, does it?

A. No.

Q. So then you would say in fixing the date of that conference, it had to be after the date of your work order?

A. Yes.

Q. Which was the 17th?

A. That is right.

Q. And it had to be prior to the date of Government's Exhibit 28-A, which was January 25th. Correct?

A. That is right.

Q. Now, when you reached the end of that conference, toward the end, I believe you testified on direct examination, that something was said that Mr. Hollifield should prepare something and send it to you?

A. That is right.

Q. Tell us again what was said in that respect and by whom?

A. Mr. Strand suggested that Hollifield prepare an R and R giving the reasons and that we would answer it.

Q. That is to say, to put in writing the very reasons he had given orally?

A. That is right.

Q. Ask you to think carefully about this: Isn't it a fact that while you were still in that conference that you and Mr. Strand verbally stated that the reasons suggested for the deviation were sufficient to satisfy you of their propriety and that you did, as of then, state it to be your decision that they would be acceptable?

A. I think so.

Q. Are you in doubt about it?

A. Well, yes, I am pretty sure. I am not sure. In the end Strand might have said: "We will think about it some more." I am not sure. My impression was, we agreed to it.

Q. That you had orally stated that the reasons were sufficient in your minds to warrant the deviation on its merits?

A. That is my impression of it.

Q. What were those reasons that led you to change your mind and to conclude finally that on the merits the deviation was proper and justified?

A. The two main ones were the kits were needed very badly and not having the goggles would hold up the kits, and too, the government would save a substantial amount of money.

Q. Wasn't there another reason that tended to establish for you that on the merits the deviation ought to be allowed?

A. One of the other reasons was that we had not gotten any unsatisfactory reports.

Q. Exactly. It was represented to you that some 15,000 D-1 kits which the government itself had packaged, using government furnished goggles, had been sent to the field and used by troops in the field without one complaint ever coming back. Wasn't that represented?

A. Yes.

Q. Wasn't that an element which led you to believe that on the merits the deviation was justified and warranted in the interests of the government?

A. That was the third reason, in the order given,

exigency, in other words, speed; saving of the government's money and there were no unsatisfactory reports.

Q. All three of those reasons at least led you to conclude that on the merits of the question, the best interests of the government would be served by approving that deviation and the use of those goggles in the kit?

A. That is right.

Q. Now, sir, as of today and any time between the date of that conference and today, has any information or knowledge come to you at all that would lead you now to state that the representation that the goggles were urgently needed was a false representation?

A. No.

Q. Have you received any information to this very moment that the representation made to you that the government would save money, some $38,000, was a false representation?

A. No.

Q. Or, have you to this moment received any information from any source that the fact that the government itself, using government furnished materials, packaged 15,000 of these goggles in kits, sent them to the field and they were used without one complaint? Have you any reason to believe that representation was false?

A. No.

Q. Did you observe anything about the conduct of Mr. Hollifield during that conference and the entire time that appeared to you to express any impropriety in his conduct in making such representation?

A. No.

Q. You recall when you and I discussed this matter some ten days ago, telling me that at the time of this conference you had no idea who the contractors were with respect to the making of these D-1 kits?

A. That is right.

Q. And you didn't knew it then?

A. No.

Mr. Kelley: Your Honor will, of course, recall that earlier in my cross-examination I approached the subject

of ski goggles; objection was made and the Court sustained it, that that was a matter not gone into on direct examination and, therefore, not proper for cross-examination. I am mindful of the saving of some time and I would, while this witness was on the stand, have him merely identify a document which does relate on its face to the ski goggle and to his deviation.

The Court: He may do that.

Mr. Kelley: I ask the government to produce for me the original of the R and R dated February 6, 1951, Subject: Goggles, Ski for survival kit. To MCREXD-7. From MCREXD-8. Attention Mr. R. G. Hollifield. Signed—

The Court: Have it marked Defendants' Exhibit G for identification.

Thereupon said R and R was marked for identification as Defendants' Exhibit G.

Q. Lieutenant, I show you what has been marked for identification Defendants' Exhibit G and ask whether or not you can identify it?

A. It is my signature.

Q. Can you identify it?

A. Yes, sir.

Q. What is it?

A. It is an R and R from me to Mr. Hollifield, stating that—

Mr. Aug: I don't want any substance of that exhibit.

The Court: Sustained.

Q. To what subject matter does it relate?

The Court: I will sustain the objection. Your request was that you be permitted to have that identified. It is identified and marked as an exhibit. You may later on call this witness, as you know, and put him on the stand any time you please, when you come to the defendants' side of the case, but we are not going to do indirectly what I have already ruled on.

Mr. Kelley: My whole purpose is to save time.

The Court: Well, we have taken so much time now, we won't try to save a minute or two.

Q. Having reference to Defendants' Exhibit G, are you aware of another R and R preceding or following this and relating to the same subject matter?

Mr. Aug: Now, your Honor,—

Mr. Kelley: All right. We will call the witness later.

Mr. Aug: We may be interested in saving time, but we are also interested in—

Mr. Kelley: Do you propose to remain in the jurisdiction of this Court for the next few weeks?

The Witness: I plan to go to Columbus on Tuesday.

The Court: As far as you know you are not under orders to go any place else at present?

The Witness: No.

Mr. Kelley: The only thing is, if the Court please, I certainly and should respectfully bow to the Court's ruling, but I would not want to do it at my peril.

The Witness: I will be within the jurisdiction.

The Court: Well, as far as we know, he expects to be here.

Mr. Kelley: I don't want to chance it.

The Court: They are under military orders.

Mr. Kelley: I don't want to suffer as a result after he is here today.

The Court: I can't tell if the Commander in Chief, Mr. Truman, orders this young man to go to Korea.

Mr. Kelley: If there is any likelihood of that, I think the Court should permit me to find out, if I wish.

The Court: You take it up with Mr. Truman and find out.

Mr. Kelley: I don't know whether I can find him home on the Potomac.

The Court: I suppose that will be a top secret. Anyhow, he will be back, as far as we know; he expects to be.

Mr. Aug: Your Honor, I have a few questions of the witness.

Redirect Examination, by Mr. Aug.

Q. Lieutenant Moss, this conference to which we have referred, you were present, Mr. Opper was present, Mr. Hollifield was present. Now these reasons were stated by Mr. Kelley on cross-examination as the reasons which were advanced to you, which became the reasons upon which you changed your rejection of the goggle: One was exigency and speed, and two was the saving of money, and three was that the government had used them before. Now those reasons were advanced to you by Mr. Hollifield, were they not?

A. Yes, sir.

Mr. Kelley: I object to that. That is not quite my question. I said used by the government and no unsatisfactory results from the field.

Mr. Aug: Very well.

Q. Used by the government and no unsatisfactory results from the field. Those reasons were advanced to you by Mr. Hollifield?

A. That is right.

Q. And the purpose of this meeting was to discuss the changing of your mind from a rejection which you had previously made; is that correct?

A. Yes.

Q. We have talked about the color requirements of the specifications. Did or did not the goggles meet the specifications with respect to color requirements?

A. They did not.

Q. We have talked about light transmission of the goggle. Did or did not the goggle meet the specifications with respect to light transmission?

A. They did not.

Q. And on the basis of those two reasons you rejected the goggle; is that correct?

A. That is correct.

Q. And this was a ski goggle?

A. No.

Q. It was a sun goggle?

A. Yes, sir.

Mr. Aug: Very well. Through with the witness, your Honor.

Recross-Examination, by Mr. Kelley.

Q. I have some recross in view of this. Didn't you say, Witness, that those three reasons which I enumerated and which were again enumerated by counsel for the government were among the reasons tending to develop your ultimate decision?

A. I might have said it. There was one other one.

Q. But those three reasons and one other were sufficient to convince you that on the merits of those reasons alone the government's best interest called for approving the deviation. Right?

A. That is right.

Q. Now your decision and your opinion on many other occasions had been called upon to consider and either approve or reject deviations, as to other components and other matters, had it not?

A. That is right.

Q. And in this case, just as you did here, you heard the pros and cons and made up your mind upon the basis of those merits and those reasons alone?

A. Yes.

Q. You were not guided by any influence, because of the presence of Mr. Hollifield, were you, or his persuasive tongue?

A. No.

Q. You thought of the reasons themselves, didn't you?

A. Yes, sir.

Q. And you knew at the time that the D-1 kit was Mr. Murray's project, didn't you?

A. No.

Q. Well, on the R and R that you received, after your conference, which set up seriatim these reasons for approval, who signed it?

A. Mr. Murray's signature.

Q. Mr. Hollifield's signature isn't there, is it?

A. No, his signature is not there.

Q. There the initials appear that say "RGH", aren't there?

A. That is right.

Q. But his signature isn't there?

A. No.

Q. Are you familiar with the custom at the Field that the person who initiates, that is to say, writes out in longhand an R and R and hands it to the stenographer, that normally she will put the initials of the man whose handwriting she thinks it is on the sheet?

A. Yes, sir.

Q. And those are the initials of who she thinks wrote out the R and R, will go to the right over his initials?

A. Yes.

Q. Now, is it not also the custom that after receiving in longhand the substance of an R and R, which the girl will type up, putting the initials at the right of the man whose handwriting she thinks it is,—does it not then go to the man whose initials are there first as the initiator?

A. Yes.

Q. Isn't it your custom that the man who initiated it should sign his name first under the word "concurrence"?

A. Yes, sir.

Q. And after that anyone concurring will sign. While the initials RGH appear here nevertheless the only signature under concurrence is Norris Murray, isn't it?

A. Yes, sir.

Q. And he was the only project engineer on the D-1 kit?

A. Yes.

Mr. Kelley: That is all.

Re-Redirect Examination, by Mr. Aug.

Q. Lieutenant Moss, talking about custom at the Field, with respect to this Routing and Record sheet, if the man who originated the memorandum were not there, in your experience has it been your experience that Routing and Record sheets would be formalized and the person who was responsible for the memorandum not have his signature on it?

A. Yes, it happen

Mr. Aug: That is all.

Re-Recross-Examination, by Mr. Kelley.

Q. Lieutenant Moss, having in mind this exhibit, Government's 28, we have two known factors, the initials RGH which correspond to those of Mr. Hollifield appear in the right margin. The pen and ink signature beneath "Concurrence" is that of Mr. Murray only. Thus, do I understand your testimony to be that two things could have brought this about, that Mr. RGH, Hollifield did initiate it, but he wasn't there to sign it and therefore Murray signed it in his place. That is one possibility. Right?

A. Yes.

Q. The other possibility is, is it not, that the person who did write this out in longhand and hand it to the stenographer, that she mistook his handwriting for RGH and therefore put down the initials RGH. But when it was transmitted to RGH, he not having initiated it, passed it on to the man who had and then the man who did initiate it, Murray, signed it? That is another possibility, isn't it?

A. Yes, sir.

Q. And the only man who can tell us the truth about that is Mr. Murray, isn't he?

A. Yes, sir.

Re-Re-Redirect Examination, by Mr. Aug.

Q. Pursuing this other possibility, if the latter were the case, would it not then be also a possibility that Murray would have corrected the RGH to indicate that Murray was the man responsible for the memorandum?

A. Yes.

Q. And let me ask you one other question. At the conclusion of your conference, at which Opper and Hollifield and Strand—

A. And myself.

Q. —and yourself and this other gentleman were present, you have stated that the conclusion then was for a routing and record sheet to be sent to you setting forth the reasons advanced as the basis of your changing your rejection at the conclusion of that conference. Who was the man who was to prepare that routing and record sheet?

A. It was my impression it was Mr. Hollifield.

Mr. Aug: No further questions.

Re-Re-Recross-Examination, by Mr. Kelley.

Q. You say that was your impression?

A. Yes.

Q. Now counsel on re-redirect has suggested to you the possibility that had Mr. Murray negotiated this document 28-A and had the stenographer mistakenly identified his handwriting to be that of Mr. Hollifield and therefore put RGH's initials, and had it then gone to Mr. Hollifield, who did not initiate it and he passed it to Mr. Murray who had, the possibility was that Mr. Murray would have had the stenographer correct the RGH. Is it not also a possibility that the matter would appear too trivial to bring back to an overworked stenographer to have her correct it?

A. Yes, it is possible.

Q. Have you ever known of such a thing happening in your unit such as this?

A. It happened to me.

Q. Did you take the trouble of going back to the stenographer and having it retyped?

A. Yes.

Q. Do you know of other instances where this has occurred and they didn't take that trouble and she was snowed under? You wouldn't know that.

A. No.

Mr. Kelley: We are through with the witness.

The Court: Counsel through?

Mr. Aug: We will call Mr. Marshall.

And thereupon

HUBERT MARSHALL, being first duly sworn, testified as follows:

Direct Examination, by Mr. Aug.

Q. Mr. Marshall, state your name for the record.

A. Hubert Marshall.

Q. Spell your last name.

A. M-a-r-s-h-a-l-l (spells).

Q. And your employment?

A. I am the District Commercial Manager for the Ohio Bell Telephone Company in Dayton.

Q. You live in Dayton, do you?

A. I live in Knollwood, which is on the outskirts of Dayton.

Q. In your capacity you have access to the long distance records of your company, do you?

A. I do.

Q. The long distance telephone calls?

A. I do.

Testimony of Hubert Marshall

Q. Have you had occasion to examine them recently with respect to telephone calls that would have been placed by Mr. Hollifield?

A. I have.

Q. And with respect to calls made from Mr. Hollifield's phone to a party by the name of Opper?

A. I have, yes.

Q. Can you produce those records for us, please?

A. (Witness produces records.)

Q. I will ask you if you have in your possession, Mr. Marshall, a record of a long distance telephone call made from No. Randolph 1849, person to person, to Mr. Opper, in Chicago, on April 13, 1951?

A. I do.

Q. Can you state to the jury what that record shows?

A. The record indicates that the call was placed—

Mr. Kelley: Just a moment. It is not in evidence; has not been offered in evidence. He is reading the substance of an exhibit that has never been offered.

Mr. Aug: May I have the exhibit marked for identification Government's Exhibit 46?

The Court: What is the date?

Mr. Aug: April 13th.

The Court: What year?

Mr. Aug: 1951.

Thereupon said record of long distance telephone call was marked for identification as Plaintiff's Exhibit No. 46.

Q. Now I will hand you Government's Exhibit marked for identification No. 46, Mr. Marshall, and ask you to state what that is.

A. This is a record of a long distance call which is made by the telephone operator as she takes and handles the call.

Q. Now what is the telephone number from which that call was made?

A. Randolph 1849 in Dayton.

Q. Does the record indicate to whom it was made?

A. The record indicates that the party requested to speak with William Opper in Chicago.

Mr. Aug: Mark this 47.

Thereupon said record of long distance telephone call was marked for identification as Plaintiff's Exhibit No. 47.

Q. I will hand you Government's Exhibit marked No. 47 for identification and ask you to identify that. Did you state what the date was on this instrument?

A. April 13, 1951.

Q. Then Government's Exhibit No. 47, I will ask you to identify that instrument, marked for identification.

A. This instrument is dated July 31, 1951. It is similar in nature to the first one: Record of long distance call taken by the operator from Randolph 1849 in Dayton, the party requesting to speak to William Opper in Chicago.

Q. I will hand you Government's Exhibit marked No. 48 for identification and ask you to state what that instrument is?

A. This is a record of service for Robert Hollifield. It indicates that Robert Hollifield was at the time responsible for Randolph 1849 in Dayton.

Q. It was his telephone number?

A. His telephone number, that is correct.

Mr. Aug: We would like to offer into evidence Government's Exhibits marked for identification 46, 47 and 48.

The Court: Very well. They may be admitted in evidence marked as Government's Exhibits 46, 47 and 48 in evidence.

Thereupon said records were admitted into evidence and marked as Plaintiff's Exhibits Nos. 46, 47 and 48, respectively.

Mr. Aug: That is all of the witness, your Honor.